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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 2737

THE ANN ARBOR RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION AND THE CALIFORNIA GROWERS' & SHIPPERS' PROTECTIVE LEAGUE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED JULY 14, 1928

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SUPREME COURT OF THE UNITED STATES

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IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, THIRD DIVISION

No. 1987. In Equity.

THE ANN ARBOR RAILROAD COMPANY, THE ATCHISON Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, Boston and Maine Railroad, Central California Traction Company, The Chesapeake and Ohio Railway Company, The Chicago and Altor Railroad Company, and William W. Wheelock and William G. Bierd, Receivers; Chicago and Northwestern Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago Great Western Railroad Company, Chicago, Milwaukee and St. Paul Railway Company, and H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers; The Chicago, Rock Island and Pacific Railway Company, The Delaware, Lackawanna and Western Railroad Company, The Denver and Rio Grande Western Railroad Company, Erie Railroad Company, Great Northern Railway Company, Gulf, Colorado, and Santa Fe Railway Company, Illinois Central Railroad Company, The Kansas City Southern Railway Company, Los Angeles & Salt Lake Railroad Company, The Michigan Central Railroad Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Missouri-Kansas-Texas Railroad Company, Missouri Pacific Railroad Company, Modesto and Empire Traction Company, The New York Central Railroad Company, The New York, New Haven and Hartford Railroad Company, Northern Pacific Railway Company, Northwestern Pacific Railroad Company, Pacific Electric Railway Company, Panhandle and Santa Fe Railway, Peninsular Railway Company, The Pennsylvania Railroad Company, Pere Marquette Railway Company, Petaluma and Santa Rosa Railroad Company, Sacramento Northern Railway, St. Louis-San Francisco Railway Company; St. Louis Southwestern Railway Company, San Diego and Arizona Railway Company, San Francisco-Sacramento Railroad Company, Southern Pacific Company, Texas and New Orleans Rail-

road Company, The Texas and Pacific Railway Company, Tidewater Southern Railway Company, Union Pacific Railroad Company, Visalia Electric Railroad Company, Wabash Railway Company, The Western Pacific Railroad Company, Petitioners,

vs.

United States of America and Interstate Commerce Commission, Defendants

Petition and Bill for Injunction—Filed Nov. 23, 1927

Now come the above named petitioners and allege as follows:

I

Each and every of said petitioners is and has been at all times herein mentioned a corporation duly organized and existing as such, or is a receiver of such a corporation, and [fol. 2] each of said petitioners is and has been at all times herein mentioned engaged in the business of operating railways for the carriage of freight and passengers as a common carrier for hire between various states in the United States, and more particularly between the State of California and the territory commonly called Transcontinental Groups "A" to "M," inclusive, and each of said petitioners and each of the carriers hereinafter mentioned, (said petitioners and carriers being hereinafter collectively called the "Carriers") are and at all times herein mentioned have been subject to the Interstate Commerce Act.

II

The jurisdiction of this court depends upon Subdivision 28 of Section 41 and Sections 45 to 48, inclusive, of the Code of Laws of the United States of America, (44 Statutes at Large, Part 1) which provide for actions to enjoin, set aside, annul or suspend in whole or in part any order of the Interstate Commerce Commission, and the jurisdiction of said court depends upon the fact that this action arises under the Constitution and laws of the United States.

III

The California Growers' & Shippers' Protective League is an association organized under the laws of California, whose residence and principal place of business is in San Francisco, California, in the Southern Division of the Northern District of California, and is the party upon whose petition the order of the said Interstate Commerce Commission made on July 20, 1927, and hereinafter mentioned, was made.

IV

The questions involved in this proceeding are of common and general interest and affect more than four hundred and fifty carriers. Each of said carriers is and was at all times herein mentioned a corporation duly organized and existing as such, or a receiver of such corporation, engaged in the business of transporting freight and passengers for hire in interstate commerce, subject to the jurisdiction of the Interstate Commerce Commission. Each of said carriers was a party to and interested in the proceedings before the Interstate Commerce Commission, hereinafter mentioned, and each and every one of said carriers was and is affected by the said order of said Commission. The said carriers are so numerous as to make it impracticable to bring them all before this court and they constitute a class, which is fairly represented by petitioners. At the request of all said carriers, the petitioners have filed this petition on behalf of all of said carriers and for their benefit.

V

Transcontinental rate groups "A" to "M," inclusive, include, generally speaking, those portions of the United States (except Montana, North Dakota, South Dakota, Wyoming, and certain parts of Minnesota and Nebraska) which lie between the Rocky Mountains and the Atlantic Ocean, and transcontinental group "J" is, generally speaking, that portion of the United States situated upon the Eastern slope of the Rocky Mountains in the vicinity of and between Cheyenne, Wyoming, and Denver, Colorado, and also the Southeasterly part of Colorado and the Eas-

terly half of New Mexico. All of said transcontinental groups will be hereinafter collectively referred to as "eastern points."

[fol. 3] VI

Deciduous fruits, other than apples, the most important of which are grapes, pears, peaches, apricots, plums and cherries, are grown in large quantities in California and are transported in carload lots by the carriers from California to Eastern points. The carriers for more than fifteen years last past have fostered and encouraged the growth of the deciduous fruit industry in California, by establishing and maintaining rates for the transportation of said fruit in carload lots from California to eastern points, which rates have been consistently less than reasonable rates for said carriage. Such rates have promoted and maintained a free movement of said fruits, and have contributed largely to the increase in the quantities of such fruits which have been transported by rail to eastern points. The number of carloads of deciduous fruits moved by these carriers from California (not less than ninety-five per cent (95%) of which has moved to eastern points) is shown by the following table:

Year	Carloads
1905	6,326
1910	11,936
1915	16,778
1916	17,891
1917	24,628
1918	27,417
1919	29,971
1920	35,246
1921	40,209
1922	53,961
1923	69,777
1924	66,786
1925	86,795
1926	78,803
1927 to Nov. 18	87,807

The carriers believe and allege that the amount of such fruit which they will move from California to eastern points

during 1928 and each succeeding year will exceed the amount moving in 1926.

VII

At the time of the filing of the complaints before the Interstate Commerce commission hereinafter mentioned, and at all times since November 18, 1922, the lawful rates on carload shipments of deciduous fruits (other than apples) from California to eastern points, are and have been as follows:

To points in transcontinental groups "A" to "M," excluding "J" ..... $1.73 per 100 lbs.
To points in transcontinental group "J" .. 1.62 per 100 lbs.

Subject to a minimum weight of 26,000 lbs. per car.

[fol. 4] Said rates were established by the carriers in accordance with law, and were a voluntary reduction from higher rates theretofore in effect. Said rates now in effect are non-discriminatory and non-prejudicial, permit and facilitate the free movement of deciduous fruits and are not now and never since their effective date have been fully compensatory to the carriers, or any of them, but said rates were and are maintained by said carriers upon a basis less than reasonable, and less than fully compensatory to the carriers to encourage and foster the free movement of deciduous fruits. Said rates will be hereinafter referred to as the "present rates."

VIII

On August 31, 1923, said California Growers' & Shippers' Protective League filed a complaint with said Commission against the carriers, entitled "Docket No. 15137, California Growers' & Shippers' Protective League, Complainant, v. Southern Pacific Company, et al., Defendants," complaining that said rates were unreasonable and undully prejudicial as compared with the rates on apples in carloads from and to the same points or groups, and with the level of rates on other commodities in general, in violation of Sections 1 and 3 of the Interstate Commerce Act, and praying for a reduction of the rates of $1.62 per one hundred pounds to Group "J" and $1.73 to the other Eastern Trans-

continental Groups, to $1.44 to all of said groups. After hearing and argument and on June 25, 1925, the Commission made its report an order dismissing said complaint and found that said deciduous fruits were moving freely in interstate commerce under said rates, that the volume of traffic had increased rapidly during recent years thereunder, and that the rates complained of were not unreasonable and were not unduly prejudicial (100 I. C. C. 79). A petition by the complainants therein for re-argument of said complaint before the Commission was denied on March 2, 1926.

IX

On or about December 27, 1926, said California Growers' & Shippers' Protective League filed with the Interstate Commerce Commission a second complaint against said carriers in a proceeding entitled "Docket No. 19130, California Growers' & Shippers' Protective League, Complainant, v. The Atchison, Topeka and Santa Fe Railway Company, et al., Defendants." Said complaint alleged that said present rates were unreasonable and unduly prejudicial, in violation of Sections 1 and 3 of the Interstate Commerce Act, that they were higher than the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and that they were upon an unjust and unreasonable basis with relation to other rates, in violation of the so-called Hoch-Smith Resolution, (43 U. S. Stat. at Large, Part 1, p. 801). The complaint prayed that the rates be reduced to $1.44 per one hundred pounds. After a hearing had upon said complaint, and on July 20, 1927, the said Commission made its order in said proceeding as follows, (omitting therefrom, for the sake of brevity the names of the parties thereto):

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

[fol. 5] "It is ordered, That the above-named defendants, according as they participate in the transportation, be and

they are hereby, notified and required to cease and desist, on or before October 10, 1927, and thereafter to abstain, from publishing, demanding, or collecting their present rates for the transportation of deciduous fruits, in carloads, from points in California on the lines, of defendants to destinations in Groups A to M, inclusive.

"It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before October 10, 1927, upon notice to this commission and to the general public by not less than 15 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of deciduous fruits, in carloads, from points in California on the lines of defendants rates which shall not exceed $1.60 per 100 pounds to points in Groups A to M inclusive, except Group J and $1.50 per 100 pounds to points in Group J.

"And it is further ordered, that this order shall continue in force until the further order of the commission.

"By the commission.

George B. McGinty, Secretary." (Seal.)

The said order of July 20, 1927 was made pursuant to a report of the Commission of the same date, a copy of which report is hereto annexed, marked Exhibit "A" and is hereby made a part of this petition.

On September 10, 1927, the carriers filed with the Commission a petition for reconsideration of said order of July 20, 1927, and also a petition praying that the effective date of said order be postponed. On September 19, 1927, the Commission made an order postponing the effective date of said order of July 20, 1927, until November 10, 1927, and directing that in all other respects the order of July 20, 1927, remain in full force and effect. On October 14, 1927, the Commission made an order in said proceedings as follows:

"Upon further consideration of the record in the above entitled proceeding, and of the petition filed October 1, 1927, by Great Northern Railway Company and other defendants for modification of the order of July 20, 1927:

"It is ordered, That the order heretofore entered in this proceeding dated July 20, 1927, which was by its terms effective October 10, 1927, and which was modified by order dated September 19, 1927, so as to become effective November 10, 1927, be and it is hereby, further modified so as to become effective December 10, 1927.

"It is further ordered, That the said order of July 20, 1927, be, and it is hereby, further modified by inserting after the word 'transportation,' in both the second and third paragraphs of said order the words, 'except over routes via North Pacific coast gateways'.

[fol. 6] "And it is further ordered, That in all other respects the said order shall remain in full force and effect."

On November 14, 1927, the Commission made a further order in said proceedings denying the said petition for reconsideration and affirming the said order of July 20, 1927, as so amended, and filed its report on further consideration, a copy of which is hereto attached, marked Exhibit "B" and is hereby referred to and made a part hereof. On November 22, 1927, the Commisison made a further order in said proceedings postponing the effective date of said order of July 20, 1927, as amended, until January 10, 1928.

The said order of July 20, 1927, as amended by the other orders referred to in this paragraph, is hereinafter, for convenience, referred to as "the order." The report of July 20, 1927, and the report on further consideration of November 14, 1927, are hereinafter, for convenience, referred to as "the report." The rates fixed by the order are hereinafter referred as the "new rates."

X

The order is void in that it takes from the carriers, and each of them, their private property for a public use without just compensation and deprives the carriers, and each of them, of their property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States; and in this behalf the carriers allege that the new rates would produce an average revenue to the carriers of not to exceed $467.07 per car, using the highest rates prescribed in the order, and allowing for the increased minimum weight on grapes permitted thereby; that the average cost incurred by the carriers in performing said

service is not less than $470.06 per car, without allowing for any profit; that the carriers will suffer a loss of not less than $2.99 on each car transported under the new rates, without allowing for any profit. In 1926, 74,356 carloads were transported by the carriers under the present rates; in 1927 up to November 18th of that year, over 80,000 carloads were transported by the carriers under the present rates; and at least 80,000 carloads will be transported in the year 1928, and each year thereafter. The aggregate loss to the carriers under the new rates would exceed $240,000 per year.

XI

The order and the new rates and each of them are based upon a mistake of law and are erroneous and beyond the power of the Commission, in that the order was made and the new rates fixed without any determination or finding that the new rates or either of them are reasonable. It is true that said report does purport to find that rates higher than the ones fixed are unreasonable; but the word "unreasonable" as so used does not refer to the test of reasonableness prescribed by law and by Section 1 of the Interstate Commerce Act, but refers instead to the mistaken and erroneous belief of the Commission that the Hoch-Smith Resolution creates a new and different standard of reasonableness, dependent not upon the cost or value of the particular service, nor upon the right of the carrier to a reasonable return from its property, but rather upon the existence of a depression in the business of particular shippers, the inability of such shippers to realize a profit from their shipments, and upon the relatively prosperous condition of the carriers' finances. No determination or finding upon the [fol. 7] actual reasonableness of the new rates or either thereof was made by the Commission, nor were the existing rates found to be unreasonable.

XII

The order and the new rates and each thereof are not supported by the findings and are based upon a mistake of law, in that the Commission did not find that the present rates were unreasonable or unduly prejudicial. In this connection petitioners allege that said Commission found in and by said report in effect that all of the present rates are

reasonable, but that said Commission erroneously based the new rates upon the grounds that the new rates were necessary to promote the freedom of movement by the carriers of deciduous fruit in interstate commerce, and were compatible with the maintenance of adequate transportation service. Said Commission erroneously construed said Hoch-Smith Resolution. Said Commission erroneously found that said resolution empowered and directed it to base rates for the transportation of a particular commodity in interstate commerce upon the condition of the particular industry concerned therein and without regard to the relative conditions prevailing in the several industries of the country. Said Commission erroneously found that the resolution empowered and directed it to base rates for the transportation of a particular commodity upon the general condition of the particular carrier's business, without regard to the costs of service to said carrier or any profit to be earned by the carrier in transporting such commodity. It erroneously found that said Resolution authorized and directed it to prescribe rates for the transportation of the products of an industry in a depressed financial condition at a level below that which would return a reasonable or any profit whatsoever to the carriers. It erroneously found that said Resolution required it to fix rates for transportation of commodities at a level which would permit the shipper to continue his business at a profit even though the carrier affected should not be accorded a reasonable profit by said rate. It erroneously found that the Resolution required it to fix rates for products of agricultural pursuits in a depressed condition relatively lower than the rates fixed for similar products of other pursuits in a prosperous condition. It erroneously found that the Resolution authorized it to make alterations in the rates for the transportation of a particular commodity without consideration and rearrangement of the general rate structure of the carriers or of the country, and the rates for transportation of other commodities. The said Resolution directs only the making by the Commission of reasonable and lawful changes in the rate structure of the country and does not direct or authorize the Commission to fix any rate unreasonable or confiscatory to said carriers. This Resolution has no application whatever to said hearing or said order or rates, but directs said Commission to arrange and adjust the whole rate struc-

ture of the country "to the end that commodities may freely move" in interstate commerce; it does not authorize or direct the Commission to make any alteration of the present rates independent of or without relation to the general rate structure of the country.

[fol. 8] XIII

The Commission fixed each of the new rates arbitrarily, contrary to the evidence and without any evidence to support it, in that

(a) The finding of the Commission that the existing rates or any rates higher than the new rates are unreasonable is, as to each of the new rates, contrary to the evidence. It appears from the evidence without contradiction that the new rates will not yield to the carriers the cost of transportation of the commodities covered thereby. The following facts appear without contradiction from the evidence adduced: that the average cost of transportation of each carload of deciduous fruit from California to eastern points is and will be not less than $433.68, exclusive of taxes, and rentals of joint facilities necessary for this service; that the carriers are required to and do and will pay taxes upon their properties amounting to an average of 8.39 per cent of the total operating expense of each carrier; that the total average operating expense and taxes for each carload of deciduous fruit transported from California to eastern points is and will be not less than $470.06; that the carriers are obliged to and do and will expend certain additional sums for the rental of joint facilities necessarily used in the transportation of said deciduous fruits, which sums cannot be exactly stated at this time; that the total revenue per car which will be derived by the carriers under the rates specified in the order will not exceed an average of $467.07 per car, and that if the new rates, or either of them, are enforced, the carriers will sustain a loss of not less than $2.99 per carload for each carload of deciduous fruits shipped from California to eastern points.

(b) The finding of the Commission that there was an existing depression in the whole of the deciduous fruit industry is, as to each of the new rates, contrary to the evidence and contrary to the special findings of the Commis-

sion. It appears from the evidence without contradiction, and it was found by the Commission, that there is and has been no depression in the business of producing peaches, apricots and cherries.

(c) The finding of the Commission that a reduction in the present existing rates of the carriers was and is necessary to promote the freedom of movement by the carriers of deciduous fruits in interstate commerce, is, as to each of the new rates, contrary to the evidence and contrary to the special findings of the Commission. It appears from the evidence without contradiction that all of said deciduous fruits are and have been moving freely in interstate commerce; that the freedom of movement of said fruits in interstate commerce has rapidly increased between 1917 and 1926, and that 74,456 carloads of said fruits moved in the year 1926. As hereinbefore alleged, more than 80,000 carloads have moved during 1927, prior to November 18th, and said fruits will hereafter move in the same or greater volume.

(d) The finding of the Commission that the new rates were and are compatible with the maintenance of adequate transportation service is, as to each of the new rates, contrary to the evidence. It appears from the evidence without contradiction that the new rates, and each of them, are less than the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and that the revenue which will be derived under said rates [fol. 9] prescribed in said order will be insufficient to repay to the carriers the cost of transportation of said fruits, and insufficient to pay to the carriers a reasonable or any profit whatever thereon.

(e) The finding of the Commission that the new rates were required by a due regard to the general and comparative levels in market value of the various classes and kinds of commodities, as indicated over a reasonable period of years, is contrary to the evidence. No evidence whatever was introduced with respect to the market value of said deciduous fruits, except from the year 1917 to the year 1926, and this period does not constitute a "reasonable period of years" within the meaning of said Hoch-Smith

Resolution. It is a fact, and was found by the Commission, that said period of years is merely a single period of steady decline in price levels of deciduous fruits from the wartime peak to prices of 1917. No evidence was introduced as to the general and comparative levels in market value of deciduous fruits and of the other various classes and kinds of commodities.

(f) There is no evidence whatever to support the assumption stated in the report on further consideration that the increased minimum load provided by the order would make some increase in the average revenue per car.

XIV

The order is based upon a mistake of law and is erroneous and beyond the power of the Commission, in that there is no warrant or authority for the fixing of the new rates excepting only the said Hoch-Smith Resolution, and that said Hoch-Smith Resolution violates the provisions of Amendment V of the Constitution of the United States, and is unconstitutional and void.

The order is based upon a mistake of law and is erroneous and beyond the power of the Commission, in that it is based upon the construction by the Commission of said Hoch-Smith Resolution as permitting and requiring the fixing of rates which are confiscatory and less than reasonable, and that, as so construed by the Commission, said Hoch-Smith Resolution violates the provisions of Amendment V to the Constitution of the United States, and is unconstitutional and void.

The order is based upon a mistake of law and is erroneous and beyond the power of the Commission, in that it is based upon the construction by the Commission of said Hoch-Smith Resolution as permitting and requiring the fixing of rates not according to any standard of reasonableness nor upon the cost or value of the service rendered by the carrier, but upon the existence of a depression in the business of particular shippers, the inability of such shippers to realize a profit from their shipments and upon the relatively prosperous condition of the carriers' finances. As so construed, said Hoch-Smith Resolution violates the provisions of Amendment V to the Constitution of the United States and is unconstitutional and void.

XV

Said deciduous fruits have moved freely in interstate commerce during the year 1927, the movement having increased from 74,456 cars during the year 1926 to more than 80,000 cars during the year 1927, prior to November 18th of that year. During the year 1927 the carriers of the country as a whole have suffered a loss in their gross and net revenues and their financial condition is relatively less prosperous than it was during the year 1926.

[fol. 10]

XVI

The order requires the carriers to put the new rates into effect on or before January 10, 1928, and further requires them to give notice thereof by not less than fifteen days filing and posting. Unless the enforcement, operation and execution of the order is restrained and suspended during the pendency of this proceeding irreparable injury will ensure to the carriers, in that they will be compelled, under the severe penalties prescribed by the Interstate Commerce Act, to publish, collect, and charge the lesser rates fixed by the order, and no other or greater rates may lawfully be demanded or collected by them, so long as the order remains in effect; and upon final judgment in the proceeding, annulling said order, the carriers will have no right to, and will be unable to, recover from the shippers the difference between the present rates and the new rates. This difference amounts to not less than $2.40 per ton, and, based on the traffic which is now moving, and which will move during the pendency of this proceeding, will amount to a large sum, exceeding $2,700,000.00 per year, all of which will be irrevocably lost to the carriers, and in addition thereto the carriers will sustain a loss of more than $240,000 per year by reason of the failure of the new rates to compensate the carriers for the cost of transporting the said deciduous fruit. On the other hand, the shippers of said fruits, if the order is sustained, may maintain proceedings before the Commission to recover, by way of reparation, the difference between the new rates and the present rates, with interest thereon. The publication, filing and posting of said tariffs, and other similar action which the carriers will be forced to take under the order, also con-

stitute an irreparable injury which will result to said carriers, if the enforcement, operation and execution of the order is not restrained and suspended during the pendency of this proceeding. Petitioners have no plain, speedy or adequate remedy at law.

Wherefore petitioners pray—

(1) That on the filing of this petition and after a hearing had on three days' notice to defendants, this court enter its order suspending and restraining the enforcement, operation, or execution of, and setting aside, the order, and each and every part thereof, for sixty days from the date of the order;

(2) That after further hearing in accordance with law, said court enter its order restraining, suspending and setting aside the order, and each and every part thereof, pending the final hearing and determination of this proceeding;

[fol. 11] (3) That after hearing held in accordance with law, this court enter its order suspending, setting aside and annulling the order, and each and every part thereof;

(4) That the court make such other and further order or orders as is meet and proper in the premises.

Herman Phleger, M. E. Harrison, Platt Kent, James E. Lyons, James S. Moore, Jr., Elmer Westlake, Attorneys for Petitioners. F. M. Angellotti, E. W. Camp, A. S. Halsted, Guy V. Shoup, of Counsel.

[fols. 12-14] *Duly sworn to by H. C. Hallmark et al. Jurats omitted in printing.*

[fol. 15] EXHIBIT A TO PETITION AND BILL

12480

INTERSTATE COMMERCE COMMISSION

No. 19130

CALIFORNIA GROWERS' & SHIPPERS' PROTECTIVE LEAGUE

v.

SOUTHERN PACIFIC COMPANY et al.

Submitted June 9, 1927. Decided July 20, 1927

Rate of $1.73 per 100 pounds on fresh deciduous fruits, other than apples, in carloads, from California to destinations in transcontinental Groups A to M, inclusive (except Group J, found unreasonable to the extent that it exceeds $1.60. Rate of $1.62 on the same commodities from California to Group J points found unreasonable to the extent that it exceeds $1.50. These rates prescribed for the future as the lowest possible lawful rates compatible with the maintenance of adequate transportation service and necessary to promote the freedom of movement of the specified products of agriculture now affected by depression. Increase in the carload minimum on grapes from 26,000 pounds to 30,000 pounds authorized.

Allan P. Matthew, H. M. Remington, Henry E. Cole, John O. Moran, and McCutchen, Olney, Mannon & Green(e), for complainant.

Carl I. Wheat, Arthur T. George, and Reginald L. Vaughan for Railroad Commission of State of California; J. J. Deuel and Edson Abel for California Farm Bureau Federation; Henry E. Cole for California Fruit Exchange; W. A. Cain for Arkansas Packing Corporation and Ozark Fruit Growers' Association; A. D. Beals for Arkansas Railroad Commission, interveners for complainant.

James S. Moore, Jr., J. E. Lyons, G. H. Muckley, E. E. Bennett, H. A. Scandrett, P. F. Gault, J. N. Davis, M. B. Pierce, A. B. Enoch, E. A. Smith, E. W. Camp, Platt Kent,

F. E. Andrews, R. S. Outlaw, and Elmer Westlake for defendants.

V. M. Parshall for State of New York, Department of Agriculture and Markets; Commonwealth of Pennsylvania, Department of Agriculture; and State of Michigan, Department of Agriculture, interveners for defendants.

Report of the Commission

ATTCHISON, Commissioner:

Complainant is a voluntary, nonprofit association, organized under California laws, in the interest of growers and shippers of deciduous fruits, the most important of which are grapes, pears, peaches, apricots, plums, and cherries. Its members, approximately 18,000 fruit growers, produce about 85 per cent of the tree fruits and 65 per cent of the grapes grown in California. On behalf of these growers [fol. 16] complainant assails the carload rate of $1.62 per 100 pounds, minimum 26,000 pounds, currently applicable on fresh deciduous fruits, other than apples, in carloads, from California points to destinations in Group J, and the rate of $1.73, with the same carload minimum, to the other eastern transcontinental Groups A to M, inclusive, as being unreasonable and unduly prejudicial in violation of sections 1 and 3 of the interstate commerce act. The complaint also alleges that these rates are higher than the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and that they are upon an unjust and unreasonable basis with relation to other rates, in violation of the so-called Hoch-Smith resolution, Public Resolution No. 46, Sixty-eighth Congress. We are asked to prescribe a rate of $1.44 to all groups for the future, which was the basis in effect immediately following the general increase of June 25, 1918. In connection with the $1.44 rate requested, complainant offers to submit the industry to an increase in the carload minimum on grapes to 30,000 pounds.[1]

[1] Rates throughout this report are stated in amounts per 100 pounds and apply on carload shipments. The term "deciduous fruits" as herein used means deciduous fruits other than apples.

The Railroad Commission of the State of California, Arkansas Railroad Commission, California Fruit Exchange, California Farm Bureau Federation, Arkansas Packing Corporation, and the Ozark Fruit Growers' Association intervened on behalf of complainant. The Department of Agriculture and Markets of the State of New York and the Department of Agriculture of Pennsylvania and Michigan intervened in opposition to the complaint.

The instant proceeding presents substantially the same issues as those passed upon by division 1 of the commission in Calif. Growers' & Shippers' Protective League v. S. P. Co., 100 I. C. C. 79. The complainant in that case is also the complainant here. In the case cited the division found that "the rates assailed as a whole are not unreasonable or unduly prejudicial as alleged." The complaint was dismissed. Subsequently we denied a petition for reargument. The Hoch-Smith resolution, primarily relied upon in the instant case, was a part of the law which we administer when our division reached the conclusion just recited. In the course of its report the division said: "We have given consideration to the matters mentioned in the resolution." However, the complaint in the former case was filed and hearing thereon held prior to the passage of the resolution. While complainant now seeks substantially the same relief as in the prior case, under practically identical issues, it claims that there are material differences between the showings made in the two cases, as will hereinafter more fully appear.

California excels every other State in the volume of production and shipment of deciduous fruits. These fruits are grown throughout the State, from the Imperial Valley north to Redding, but the bulk of the production is north of Tehachapi Summit. Practically all of the cherries are shipped by express, and most of the peaches and apricots are utilized by the canneries and dried-packing plants within the State. A heavy tonnage of canned and case goods is produced for interstate shipment by these branches of the deciduous-fruit industry. They also induce the flow annually of several thousand carloads of collateral traffic, such as box shook, car strips, and the like.

[fol. 17] Deciduous-fruit shipments comprise the largest single item of transcontinental tonnage, as well as the great-

est portion of the transcontinental movement of perishable traffic. California ships more plums and cherries than the remainder of the United States, but by far the heaviest movement from the State is of grapes. In 1926 California shipped 81 per cent of the carload shipments of grapes throughout the United States. About 70 per cent of the grapes shipped are juice grapes. The crop season for pears extends from June 1 of one year through May of the following year, and records for 1924, the last season available, show that California supplied over 38 per cent of all carload shipments in the United States. The interstate shipments of peaches from California in 1926 were less than 10 per cent of the total throughout the United States.

In 1926 the movement of deciduous fruits to the territory that takes the $1.73 rate amounted to 1,044,969 tons. This vast tonnage moved in 74,456 cars, made up as follows: Grapes 58,334, pears 9,523, plums 4,741, peaches 1,093, miscellaneous 765. To points in Group J the movement for the same year amounted to 8,786 tons, or 627 cars.

The principal originating trunk lines are the Southern Pacific, the Santa Fe, and the Western Pacific, in the order named. The Los Angeles & Salt Lake, a part of the Union Pacific system, handles a relatively small amount of the traffic. While a considerable portion of the traffic originates on the main lines of these carriers, over 51 per cent of the total movement in 1926 was from their branch lines, and 17.5 per cent from short-line connections.

The manner in which shipments of deciduous fruits are assembled, and thence hauled across the country, was described in the report of our division as follows: Calif. Growers' & Shippers' Protective League v. S. P. Co., supra, pages 82-83:

Shipments from points on the Southern Pacific or its short-line connections north of the Tehachapi are moved to Roseville, Calif., a few miles east of Sacramento, and there assembled into trains of 45 to 55 cars, averaging about 50 cars each. These move to Ogden, Utah, where they are delivered to the Union Pacific, and the latter handles them to Council Bluffs Transfer, Iowa. At this point the trains are broken up and the cars distributed, principally between the Chicago & North Western and the Chicago, Milwaukee & St. Paul, hereinafter called the North Western and the Mil-

waukee, respectively, although the Illinois Central receives a comparatively small portion of the traffic. Most of the traffic moves over these lines to Chicago, Ill. The Southern Pacific assembles shipments from south of the Tehachapi at Colton, Calif., about 57 miles east of Los Angeles. The movement over the Southern Pacific via El Paso, Tex., is light in comparison with the movement via Ogden.

The bulk of the Santa Fe traffic originates in the southern part of the San Joaquin Valley, is assembled into trains at Bakersfield, Calif., and moves direct over that line to Chicago. The Western Pacific assembles its traffic at Sacramento. The bulk of it is delivered to the Union Pacific at Ogden, and the movement beyond is similar to traffic originating on the Southern Pacific. The Salt Lake traffic is assembled at San Bernardino, Calif., and is delivered to the Union Pacific proper at Ogden.

The traffic moves chiefly to the large cities in the territory east of the Mississippi River and north of the Ohio River to the Atlantic coast. Practically all of it moves to the Missouri River and beyond, and the traffic to the territory south of the Ohio River, usually referred to as the Southeast, is relatively light. * * *

[fol. 18] Beyond Chicago the Erie system handles the bulk of the traffic to New York, the Pennsylvania delivers most of the traffic to Pittsburgh and Philadelphia, and the Baltimore & Ohio delivers it at Washington, D. C., and Baltimore. The Michigan Central carries most of the traffic to Detroit and Buffalo. The New York Central delivers at Cleveland, and it turns over to the Boston & Maine the traffic for Boston. Of course, the lines mentioned participate in the traffic to other points, and many other lines participate in the traffic to some extent. In fact, almost every line in the country occasionally transports a car of California deciduous fruit.

The foregoing is a substantially correct statement of the manner in which shipments are now handled.

By far the greater portion of the traffic goes to points east of Chicago. An analysis of all shipments from California to the eastern transcontinental groups in 1926 shows that the weighted-average haul on grapes was 3,000 miles, on pears 2,955 miles, plums 2,721 miles, peaches 2,403 miles, and the average of all deciduous fruits 2,970 miles.

The movement of deciduous fruits begins in June and ends in December. It is heaviest from August to November, inclusive, when operating and traffic conditions are more favorable than at other seasons. Deciduous fruits usually move in refrigerator cars, must be stopped enroute for re-icing at various points, and expedited schedules are maintained.

In order that the present situation of the deciduous-fruit industry might be viewed in its proper perspective, complainant developed at length the trend of agriculture in California. During the past 30 years much land formerly used for cattle raising or the growing of grain and general field crops has been diverted to the growing of fruits and vegetables. The transition has been such that the annual total farm value of fruits and vegetables now exceeds that of the field crops. In 1926, 264,214 carloads of fruits and vegetables originated in California, of which about 210,000 moved to interstate destinations. This is equivalent to more than 10 trainloads of 55 cars each for every day of the year. The soil and climate are peculiarly adapted to fruit and vegetable culture, and there are large areas that can be used for those purposes only. Should the growing of deciduous fruits become progressively unprofitable, it is the opinion of economists that much of this land will go back to its native state. California is now a wheat-importing State, as the California farmer finds it impossible to grow wheat at a profit in competition with the producers in the Middle West. For the year 1925, the farm values of the respective products were as follows, based on December 1, 1925, prices: Deciduous fruits $105,756,000, citrus fruits $85,243,000, vegetables $52,047,000, and main field crops $194,675,000. The importance in California's agriculture of the growers of fruits and vegetables has been established. While the growing of deciduous fruits is but one branch of that agriculture, it is the most important individual agricultural interest. The growing and shipping of deciduous fruits is one of the great basic industries of California, and as such is an important factor in the prosperity of the State, and of the carriers which serve it. A natural disadvantage of the industry is its distance from consuming markets. Not more than 5 per cent of the production of fresh fruits in California is consumed there, and

the products must of necessity move to the large consum- [fol. 19] ing territory east of the Missouri River and extending to the Atlantic seaboard. When prices of fruit are high, growers are not particularly concerned about the level of their rates. This was true in 1920, when both rates and prices were at their peak. But when prices are low, transportation charges become an important item of expense in the production and marketing of fruit. That is the present condition of the industry and in complainant's view the markets must be brought nearer by means of rate reductions. In the former report the division said at page 80:

This industry had suffered for two or three years prior to the date of the hearing, December, 1923, because of a marked decline in prices received for the fruit without corresponding reductions in the cost of production, including transportation to the markets in the East, and it was said to be facing disaster.

Complainant contends that this recession in prices, and consequent economic depression, has continued practically unabated since 1922.

The farm values in dollars per acre of the principal California fruit and vegetable crops are as follows for the years shown:

Commodity	1919	1920	1921	1922	1923	1924	1925	1926
Deciduous fruits	$250	$258	$173	$198	$116	$121	$112	$106
Citrus fruits	313	322	220	224	251	371	365	375
Apples	254	199	179	129	140	209	156	93
Vegetables	200	230	206	286	293	213	208	184

These values were obtained from United States Department of Agriculture reports, and are based on prices as of December 1 each year. In so far as they relate to deciduous fruits they in some measure corroborate the showing set out below in the comparison of eastern market prices. There has been since 1921 a distinct downward trend in the price levels of deciduous fruits in contrast to the upward trend of prices in the citrus-fruit industry, and in contrast with the comparative stability of the vege-

table prices. The following table shows the weighted-average price received in eastern markets for California deciduous fruits for each year since 1917:

	Average price per 100 pounds[1]		Average price per 100 pounds[1]
Year 1917	$5.43	Year 1922	$6.74
Year 1918	6.93	Year 1923	6.19
Year 1919	7.99	Year 1924	6.58
Year 1920	9.97	Year 1925	5.60
Year 1921	7.82	Year 1926	5.62

[1] Does not include weight of container.

These prices are shown to us in compliance with the terms of the Hoch-Smith resolution, and to meet the statement in the prior report of our division, that "the record herein does not show the comparative levels in market value of the various commodities over a reasonable period of years." The record now before us shows this information for each year since 1917 as to each individual commodity. As has been stated, the foregoing tabulation is a weighted average of the prices received for all deciduous fruits. While these average prices are dominated by the grape prices, which have receded to a greater extent than have those of other deciduous fruits, they present a fairly accurate index of the relative prosperity of the industry as a whole for the [fol. 20] past 10 years, because grapes usually constitute at least three-fourths in volume of the movement of all deciduous fruits from California. Defendants contend that a showing merely of price levels from 1917 to date is insufficient, because it is limited to the decline from war-time peaks, and that such a showing will not enable us to "give due regard to the general and comparative levels in market value * * * as indicated over a reasonable period of years" as required by the Hoch-Smith resolution.

While prices were generally inflated during and following the period of the World War, freight rates likewise reached their peak at about the same time. One of the grounds of complaint is that freight rates have not changed in the face of changed conditions in the deciduous-fruit industry. Rates on deciduous fruits are but 10 per cent less than the war-time peak, while the price levels of all de-

ciduous fruits have been deflated to a point where the weighted-average prices in 1926 were less than 57 per cent of the peak prices received in 1920. Compared with 1917 prices, those in 1926 were but 3.5 per cent higher, while freight rates are still 50.4 per cent above the 1917 level to all the groups, except to Group J.

In connection with this general question, complainant contrasts the charges for transportation and refrigeration with the average market price received for all deciduous fruits in eastern markets during the years 1920 to 1926, inclusive. The average relationship of these charges varies somewhat on the different fruits, but on all the principal deciduous fruits,[1] was 18.8 per cent in 1920, 27.8 per cent in 1921, 29 per cent in 1922, 31.6 per cent in 1923, 30 per cent in 1924, and 35 per cent in 1925 and 1926. In 1917 the freight charges represented 23.7 per cent of the average market price. Complainant contends that these charges now constitute an undue proportion of the price received for the fruit. With the exception of one year, there has been a constant upward trend in the relationship of transportation charges to the price received for the fruit, but this is merely a reflection of the decline in prices of the latter. If we exclude the weight of containers the percentages are somewhat higher.

Complainant likewise compared the relationship of the total cost of getting the fruit to market to the average market price. In addition to transportation and refrigeration charges these costs include packing and selling costs. This relationship showed a similar upward trend from 36 per cent in 1920 to 56 per cent in 1925 and 1926. Refrigeration and loading charges have remained constant since 1921. Selling costs are based on a percentage of the price received. The selling and loading costs combined in 1925 and 1926 were 62 per cent of similar costs in 1920. Some items of expense in connection with the production and marketing costs to the producer show percentage increases comparable to those in the freight rate. Fluctuations in market price during the season sometimes equal or exceed the freight rate.

[1] Including the weight of containers, and excluding refrigeration charges not here in issue.

Prices of peaches and apricots have materially improved from 1924 to 1926. Apricots, for example, in 1926 brought a higher price than in any other year after 1917, except 1920. The average price for peaches the past three years [fol. 21] exceeded the average price for the previous seven years. But, as has been stated, peaches and apricots are a small portion of the total fresh deciduous-fruit shipments. They are utilized extensively by local canneries and dried-packing plants.

Defendants contend that overproduction of pears, plums, and grapes is mainly responsible for the recession in their respective price levels. From 1924 to 1926 the production of pears and plums in California increased 62 and 82 per cent, respectively, while the farm value decreased to about 55 per cent of the 1924 farm value. Grapes increased about one-third in quantity, and declined about 20 per cent in price during the same period. Lack of coordination and organization in the distribution of deciduous fruits is also referred to by defendants.

While undoubtedly overproduction and distributing practices are factors in the situation, the essential fact still remains that the industry is in serious financial straits. As one witness expressed it, the evidences of this condition are "increased mortgages, difficulty in meeting taxes, reduction in the size of net income, loss of farms, all the usual evidences that follow a depression in any industry." Land values have declined to a point where most if not all of the war-time inflation has been removed, and while some ranches show a profit many more are run at a loss or have been taken over by banks. By the testimony of economists, bankers, and growers, and by comprehensive statistical data covering the entire economic status of the deciduous-fruit industry in California, complainant has established that this industry, for the past five years, has been undergoing a period of deflation and depression, and that the years 1925 and 1926 were more unfavorable than the years preceding.

In complainant's view the existing depression in California deciduous-fruit industry is precisely such as the Hoch-Smith resolution was designed to assist. It contends that a rate reduction will tend to foster and preserve that industry and that this result will be in the interest of a natural and proper development of the country as a whole.

Defendants, on the other hand, claim that if they have justified their present rates under sections 1 and 3 of the interstate commerce act, nothing either in the Hoch-Smith resolution, or developed of record in the instant case, will provide lawful warrant for us to reduce such rates.

In two recent cases we have had occasion to discuss the meaning and intent of the Hoch-Smith resolution. In Grain and Grain Products, 122 I. C. C. 235, 264, we said:

As aforesaid, the intent of the resolution is that products of agriculture affected by depression shall move at the "lowest possible lawful rates compatible with the maintenance of adequate transportation service." It sets no new standard of lawfulness, but provides, in effect, that to the extent that there are flexible limits to our discretion, we shall require the maintenance of the lowest rates falling within those flexible limits. Rates that may lawfully be required must in principle be high enough to cover all the cost that may fairly be allocated to the service plus at least some margin of profit. Northern Pacific Ry. v. North Dakota, 236 U. S., 585; Norfolk & Western Ry. v. West Virginia, 236 U. S., 605. But it has always been recognized that the burden of transportation may reasonably be adjusted with some regard to the value of the service, in other words, that the higher grade, more valuable commodities may be required to pay a greater margin of profit than those that are of lower grade and less valuable. The substance of the provision of the resolution quoted above [fol. 22] is that agricultural products affected by depression shall in this respect be included in the class of most favored commodities, to such extent, at least, as may be "compatible with the maintenance of adequate transportation service."

Subsequently, in connection with similar language in American Live Stock Asso. v. A. T. & S. F., 122 I. C. C. 609, 617, we further said:

In the past we have had occasion to consider at times what may be called "out-of-pocket" cost, but while it has been contended that the carriers might voluntarily, in certain situations, establish rates covering only such cost, it has never been seriously contended that we could lawfully

require this to be done. Rates that we may lawfully require must in principle be high enough to cover all the cost that may be fairly allocated to the service plus at least some margin of profit. * * * We say "in principle," because only rarely is definite information available as to such cost, and in practice rates must often be fixed largely by comparison with other rates. Of course, the other sections of the interstate commerce act must also be borne in mind in determining the lowest lawful rates in a particular situation.

The resolution is in effect a direction to us to give agricultural commodities affected by depression the lowest rates that it is possible to give without running counter to the provisions of the interstate commerce act and the carriers' rights under the Constitution. Section 1 of the act requires that all rates shall be just and reasonable. What is a reasonable rate? It may be said to be somewhere between the minimum charge that can be made for the service and permit the carrier to live, and the maximum charge that can be borne by the shipper. In the Western Advance Rate Case, 20 I. C. C. 307, pages 347, 348, we said:

What is the reasonable rate that shall be charged to the shipper? The legislature may not make rates so as to confiscate the carrier's property. The carrier, on the other hand, may not make rates which are unjust or those who by economic necessity are compelled to employ its services. Here, then, we have the minimum of legislative power and the maximum of the carrier's power. Between these lies a zone, indefinite and variable. Without question the carrier will tend toward the maximum, while governmental authority will be inclined—in fact has been created—to repress its upward tendency. One moves inevitably upward to the highest rate which the traffic will bear; the other attempts to discover some relation between charge for service and cost of service.

Both the commission and the courts have repeatedly referred to a flexible limit of judgment in reaching a conclusion as to the reasonableness of a rate or a schedule of rates. Otherwise stated, there is a zone of reasonableness within which any rate is just and reasonable to the carrier

as well as just, fair, and reasonable to the shipper that utilizes the carrier's services.

We again conclude that "the lowest possible lawful rates" which we may prescribe under the resolution on any given agricultural traffic as to which depression has been shown must be somewhere within the zone of reasonableness permitted by the flexible limits of discretion reposed in us, and that such rates must be put as near the lowest limit or level of that zone as is compatible with the maintenance of adequate transportation service.

In our report in Calif. Growers' & Shippers' Protective League v. S. P. Co., supra, pages 83 and 84, we said:

[fol. 23] The rates are blanketed from all points in California to large destination groups in the East. Originally the rates to the territory east of Chicago were higher than those to Chicago and points west thereof. Prior to 1909 the rates to Groups D to J, roughly the territory from Chicago to Denver, Colo., fluctuated between $1.25 and $1.15, but were thereafter stabilized at $1.15. The rates to Group A, B, and C, east of Chicago, were generally $1.40 to $1.50 until 1911, when they were reduced to $1.15, the same as to Chicago and west. This rate of $1.15 was increased to $1.44 on June 25, 1918, under General Order No. 28 of the Director General of Railroads. The rates to points in the Southeast, which had been on a higher level, were placed on the same basis in 1919 by including such points in Groups A, B, or C. Under the general increases of August 26, 1920, the rate to Group J, Denver territory, was increased 25 per cent to $1.80, and the rate to Groups A to H, inclusive, was increased 33/1-3 per cent to $1.92. The 10 per cent reduction, first established temporarily on January 1, 1922, and without limit as to time on July 1, 1922, resulted in the present rates of $1.62 to Group J and $1.73 to the other groups. Points in the Southeast were placed in Groups K, L, and M on November 18, 1922, without any change in the rates.

The carload minimum was 24,000 pounds until 1911, when it was increased to 26,000 pounds, the present minimum.

The various reductions indicated in the foregoing quotation were published voluntarily by the carriers, and the only increases were those pursuant to the general increases of 1918 and 1920.

Since the rates assailed are blanketed over a large area in order to afford the widest possible distribution, and as all parties agree that the blanket should not be broken up, the propriety of the $1.73 rate must be considered from the standpoint of its reasonableness for the average weighted haul. This will vary from year to year, but in general will probably exceed 2,900 miles.

Complainant presented a comparative analysis of (1) the rates upon fruits and vegetables that move from California to eastern defined territories; (2) the rates upon other perishable traffic in effect throughout the United States; and (3) the general level of the deciduous-fruit rates as compared with the level of other transcontinental rates.

The following table shows the current transcontinental rates on the principal fruits and vegetables that move from California to the East:

Commodity	From California points to groups—						Minimum weight
	A[1]	B[1]	C[1]	D, E	F,G,H,	J	
	Cents	Cents	Cents	Cents	Cents	Cents	Pounds
Deciduous fruits	173	173	173	173	173	162	26,000
Apples	150	150	150	150	150	141	[2]31,000 [3]35,000
Oranges	155	155	155	155	155	155	36,000
Lemons	150	150	150	150	150	141	26,200
Fresh vegetables (packages)	175	173	165	146	139	134	20,000
Melons	175	173	165	146	139	134	20,000
Cantaloupes	175	173	165	146	139	134	20,000
Vegetables (bags)	151	135.5	128	110	110	106	30,000
Cabbage, fresh (crates)	151	135.5	128	110	110	106	24,000

[1] Rates to Groups K, L, and M are the same as to points in Groups A, B, and C, respectively.
[2] Cars under 32 feet 9 inches.
[3] Cars 32 feet 9 inches and over.

To the Metropolitan district in New York and to New England the rate on oranges shown is subject to an additional terminal charge of 3 cents, making the rate $1.58.

While admitting the difficulties of comparing rates that are extensively blanketed with rates such as those on vegetables, melons, and cantaloupes, which although maintained [fol. 24] upon the group plan are somewhat graded with respect to distance, complainant nevertheless claims that if we consider all pertinent factors the average level of the deciduous-fruit rates is materially higher than that of the rates upon other perishable traffic shown. In this connection

it points particularly to the low carload minima applicable on vegetables, melons, and cantaloupes. Complainant also compares the earnings under the foregoing rates to Groups A, B, D, F, and J, based upon the average distance to each group and upon the minimum carload weight. The record, however, affords a better comparison, based upon the average weighted haul, and as to deciduous fruits, apples, and citrus fruits, upon the average weight of all shipments made in 1926. The average haul for the other commodities is the same as that shown in our report in California Citrus League v. Director General, 58 I. C. C. 385. This comparison is as follows:

Commodity	Average weighted haul	Average load	Revenue[1]			
			Per car	Per car-mile	Per net ton mile	Per gross-ton mile[2]
	Miles	Pounds		Cents	Mills	Mills
Grapes	3,000	28,840	$498.69	16.64	11.5	4.1
Pears	2,955	26,110	451.62	15.30	11.7	3.9
Plums	2,721	26,336	455.12	16.72	12.7	4.3
Peaches	2,403	26,483	457.23	19.01	14.4	4.8
All deciduous fruits (except apples)	2,970	28,306	489.42	16.50	11.6	4.1
Apples	2,879	37,452	561.19	19.50	10.4	4.4
Citrus fruit	2,639	34,796	537.24	20.29	11.7	4.7
Lemons	2,523	29,232	438.48	17.3	11.8	4.3
Fresh vegetables (packages)	2,246	22,200	324.12	14.4	13.0	3.9
Cantaloupes	2,468	21,900	319.74	12.9	11.8	3.6

[1] Earnings on lemons and cantaloupes are based on Group D rates; and on all other commodities shown they are based on blanket rate applicable to Groups A to H, inclusive.

[2] Take weight of car, 52,053 pounds, except on peaches.

The earnings per car on deciduous fruits are higher than on lemons, materially higher than on fresh vegetables and cantaloupes, but lower than on apples and citrus fruits. Considering the length of haul, the net-ton mile earnings on deciduous fruits are relatively higher than on all the other commodities, while the car-mile and gross-ton mile earnings are higher in some instances and lower in others. The $1.44 rate sought by complainant, with a minimum of 30,000 pounds on grapes, and an estimated average loading of 30,000 pounds for all deciduous fruits, for an average haul of 2,900 miles would produce revenue of $432 per car, 14.8 cents per car-mile, 9.93 mills per net-ton mile, and 3.7 mills per gross-ton mile. Complainant contends that, if the deciduous-fruit rates and the earnings therefrom are viewed in the light of the economic condition of the industry, and the traffic and transportation conditions surrounding the movement, the conclusion follows that deciduous fruits bear a heavier burden of freight charges than other perishable traffic of substantially like character that moves from California.

Coming now to the rates on perishable traffic applicable in certain other sections of the country, complainant refers to a rate of $1.875, carload minimum, 20,000 pounds, applicable on bananas and cocoanuts from New Orleans and other Gulf ports to Portland, Oreg., Spokane and Seattle, Wash., Vancouver, British Columbia, and Los Angeles and San Francisco, Calif. The average distance is 2,964.8 miles, about the same as the weighted-average haul of California deciduous fruits in 1926. The rate yields $378.56 per car, but after deducting terminal charges at New Orleans which are absorbed by the line-haul carriers becomes [fol. 25] $360.02. The earnings yielded on bananas and cocoanuts are 12.7 cents per car-mile and 3.63 mills per gross-ton mile, reduced to 12.1 cents per car-mile and 3.45 mills per gross-ton mile after eliminating the terminal charge. Defendants show that the weighted-average haul on bananas to Arizona and California points is about 2,151 miles, and yields earnings per car-mile of 18.9 cents. After deduction of the terminal charge the earnings are about 17 cents per car-mile, using the above earnings per car as a basis. In connection with these banana rates, the carriers grant free transportation to caretakers in charge of all shipments, and bananas and cocoanuts are transported

under faster train schedules than those accorded California deciduous fruits. The tariffs also provide for the hauling of racks and 400 pounds of straw free. The average number of cars in a special train of bananas is 41.14, and the average loading per car 21,600 pounds. Complainant contrasts a gross revenue of $15,000 yielded by a typical trainload of bananas from New Orleans to Pacific coast destinations with a typical trainload of California deciduous fruit yielding an approximate gross revenue of $29,000. It argues that if the trainload earnings from the movement of bananas between the points specified are compensatory, earnings from the movement of a trainload of deciduous fruit are certainly highly profitable.

The rates and car-mile earnings on bananas from New Orleans and other Gulf ports to destinations in eastern trunk-line, Central Freight Association, and western trunk-line territories are also referred to. A summary of 171 rates to those destinations and to transcontinental territory applying for an average distance of 2,525.7 miles, shows average earnings per car-mile of 12.5 cents, and per gross-ton mile, of 3.57 mills, after deducting for absorptions at New Orleans. Similar comparisons are presented showing present rates on pineapples from the Gulf ports and from Jacksonville, Fla., to Pacific coast points. The average distance from the Gulf ports is shown to be 2,938.6 miles, and the average earnings, after deducting terminal expenses absorbed by the carriers, $461.40 per car, 15.6 cents per car-mile, and 4.31 mills per gross-ton mile. From Jacksonville the average haul is 3,325 miles, and average revenue per car, $480.11, which yields 13.5 cents per car-mile and gross-ton mile earnings of 3.90 mills. Free transportation of caretakers is also granted in connection with pineapple shipments.

The movement of bananas from the Gulf ports to Pacific Coast States is substantial, but is not comparable with the movement of deciduous fruits from California to the East. In 1925, the Southern Pacific handled 45,995 tons of bananas from New Orleans to Pacific Coast States, or approximately 4,500 carloads. In most instances the cars are returned empty. There is no movement over the Santa Fe. Defendants claim that the rates on bananas referred to are influenced by the competition of water carriers from Central

American ports to Pacific coast destinations. In 1925, the imports of bananas through Lost Angeles and San Francisco Bay ports amounted to approximately 11,150 tons. Complainant contends that it may reasonably ask for the establishment of rates upon deciduous fruits from California on at least as favorable a basis as the rates voluntarily maintained by the carriers for the movement of imported bananas, cocoanuts, and pineapples.

[fol. 26] Recognizing that rates on fruits and vegetables for comparatively short hauls are not susceptible of direct comparison with those on the long-haul deciduous-fruit traffic, complainant undertook to extend such rates by what is conceived to be a proper rate of progression in order to obtain constructive rates for the longer distances. To obtain its rate of progression, complainant used the scale of rates prescribed by us in Oklahoma Corporation Commission v. A. & S. Ry. Co., 98 I. C. C. 185, for the movement of cotton-seed cake and meal from Oklahoma, Texas, Arkansas, western Louisiana, and other southern points to destinations on the Pacific coast as well as to intermountain territory. That scale ran out at 2,600 miles, but complainant has continued the progression to 3,000 miles at the same rate of increment for each additional 100 miles, 1 cent, as was used by us in constructing the scale for the distance from 1,600 to 2,600 miles. The differentials prescribed by us to cover hauls through the intermountain territory were also included. In Western Cement Rates, 48 I. C. C. 201, we observed that "under our present rate systems rates seem more nearly proportional to the square root of the distance than to the distance itself." Obviously this statement must be taken with qualification; the functions of the parabolic curve thus described tend toward a condition, as distance increases, where added mileage does not carry any increment in the rate at all. The cottonseed scale was selected by complainant because the increases in its progression are substantially in proportion to the square root of the distance, and for the further reasons that it extends to a distance which more nearly approaches the average weighted haul on California deciduous fruits and is applicable to traffic moving through inter-mountain and Pacific Coast States.

Briefly, complainant has undertaken to extend the various rates on deciduous and other fruits for comparatively short hauls to the transcontinental distance in accordance with the percentage rate of progression employed by us in prescribing a scale on cottonseed cake and meal in the case cited. The showing is so voluminous that it is impracticable to detail it. Complainant has taken rates ranging from 67 cents to $1.46, applicable on either peaches, deciduous fruits, Concord grapes, cantaloupes, green vegetables, bananas, or cocoanuts, applying for distances from 765 miles up to 2,200 miles from various origins in the South and Southwest to destinations in eastern trunk-line, central, and western trunk-line territories. It has applied thereto the rate of progression indicated in the cottonseed scale, and thus has computed the earnings under such rates for an average distance of 2,909 miles, the weighted-average haul shown in our prior decision. The results range from 2.33 mills to 3.83 mills per gross-ton mile, as compared with earnings of 4.1 mills per gross-ton mile yielded by the deciduous-fruit traffic here considered.

Defendants criticize the progression of the scale used in projecting these short-haul rates, and we think with some merit. That scale, of course, was prescribed with reference to the particular commodity and on the record then being considered. The rate of progression for the longer distances to intermountain and Pacific coast territory was 30 cents per ton for each 100-mile block. In Pacific Manure & Fertilizer Co. v. A. & R. R. R. Co., 95 I. C. C. 430, 432, we said:

[fol. 27] While it is not unusual in constructing scales of distance rates to apply a lower rate of progression for distances beyond 800 or 1,000 miles than is applied to the immediately preceding distances, no reason appears why that should necessarily be done; and upon the present record we find that to apply a rate of progression lower than 40 cents per ton for each 100 miles in extending the Calivada scale to arrive at group rates on the traffic here considered, would result in rates lower than reasonable maximum rates.

Defendants call attention to various scales with varying rates of progression which, if applied to the rates selected by complainant, would produce constructure rates for the

transcontinental distance higher than the rates assailed. They do not, however, advocate this method of comparison. The projection of short-haul rates for comparison with those for longer hauls, regardless of the method used, is not a very satisfactory test.

One of the chief grounds relied upon by complainant is what is termed "a comparison of relative rate levels." Since shortly after August 26, 1920, the date of the last general increase, there has taken place a gradual downward readjustment of the transcontinental rate structure with a corresponding decline in the rates maintained locally in the Mountain-Pacific group. In spite of this downward trend the rates on deciduous fruits, except to points in Group J, are still 50.4 per cent higher than the June 24, 1918, basis. As a result deciduous fruits are higher as related to the pre-war level than are the rates upon the great body of transcontinental and Mountain-Pacific traffic. As illustrative, complainant shows the comparative increase in 75 commodities moving eastbound transcontinentally and 65 commodities moving westbound, admitted by defendants to represent a fair cross-section of the transcontinental traffic. On eastbound traffic the rates are on an average 29 per cent above the June 24, 1918, basis, while westbound they are but 22 per cent above that basis. Import and export rates from and to Pacific coast ports now exceed the June 24, 1918, basis on an average by 41 per cent and 18 per cent, respectively.

A somewhat similar showing may be made as to certain traffic moving locally in Mountain-Pacific territory. Many of these transcontinental rates were reduced in order to retain or to secure traffic which would otherwise move by water, and other reductions were made to permit specific competitive commodities to move or to reach certain markets. The circumstances and conditions surrounding their movement are to that extent dissimilar. As to still other reductions, the explanation of the disparity is purely historical, as on lumber, and on petroleum and petroleum products. Largely because of the restrictions in the amount of increases or in the manner of increasing these rates in 1918, the present rates on lumber from the Pacific coast moving transcontinentally now exceed the June 24, 1918, basis by but 23 per cent, and those on petroleum and its products are but 25 per cent higher than rates as of that date. Fresh

citrus fruits are now but 35 per cent higher than on June 24, 1918, although the voluntary reduction accorded citrus fruits was accompanied by an increase in the minimum weight to 36,000 pounds. Complainant's showing with respect to the percentage increase in the rates on deciduous fruits must be viewed in the light of the fact that in 1911 the rates were made uniform by reductions to the lowest rate, $1.15. The reductions to groups east of Chicago were [fol. 28] from rates as high as $1.50, and the defendants claimed represented efforts on their part to assist in building up the industry in California, situated far from the centers of consumption. The reductions in question were preceded by an increase in the minimum weight from 24,000 to 26,000 pounds. Moreover, at that time from 70 to 80 per cent of the refrigerator cars moved westbound under load.

In connection with this showing of relative rate levels, complainant refers to our decision in Rates on Grain and Grain Products and Hay, 64 I. C. C. 85, where we held that grain, grain products, and hay were bearing "a share of transportation charges which is disproportionate." It deduces from this decision the principle that when rates on a particular body of traffic are found to be disproportionately high in comparison with rates on other traffic, it is within our power to condemn such rates as violative of the interstate commerce act, and contends that deciduous fruits now bear a disproportionate share of the transcontinental freight-rate burden. They seek the same benefits for deciduous fruits that the carriers, in the exercise of their rate-making discretion, have granted to other transcontinental traffic quite generally.

While the complaint alleges a violation of section 3 of the act, no great reliance was placed upon that allegation. It is predicated on the fact that the general increases of 1918 and 1920, and the processes of readjustment since that time, have eventuated in a greater increase on deciduous fruits relative to the pre-war level of rates than on other commodities, such as lumber, petroleum, livestock, etc. A similar contention was made and answered adversely in State of Washington v. Director General, 58 I. C. C. 701, 706.

As bearing on the question of relative rate levels the California commission refers to our decision in Express Rates, 1922, 83 I. C. C. 606, 89 I. C. C. 297, where we found

that the carload express rates on fruits, berries, vegetables, butter, and eggs would thereafter be unreasonable to the extent that they exceeded the rates in effect on October 12, 1920. By reason of our order in that case, the carload express rates on fruits and vegetables from the Pacific coast to New York and other points east of Chicago were reduced so that they now exceed the pre-war basis by but 27.6 per cent. If the rates here assailed were reduced to reflect the same percentage over the pre-war basis, the $1.73 rate would become $1.465.

Complainant also relies upon the traffic and transportation conditions surrounding the movement of deciduous fruits, and urges that the rates and earnings heretofore shown must be considered in connection with these conditions. There has been an enormous increase in the tonnage of these fruits, and volume of movement is an important factor in testing the reasonableness of a rate. In 1916 the total carload shipments of deciduous fruit from California to interstate destinations amounted to 17,891 cars. In 1925 the shipments approximated nearly five times that number, 86,795 cars. In 1926 there was a recession to 78,803 carloads, 1,344 of which moved by express. There has also been a decided increase in recent years in the tonnage of citrus fruit, vegetables, and cantaloupes. Fruits and vegetables constitute 34.1 per cent of the total eastbound transcontinental tonnage of the Southern Pacific, and a still greater percentage of that of the Santa Fe. In 1925 the Santa Fe handled about 30,000 carloads of deciduous fruit, and in 1926 about 25,000 carloads. Prior to 1917 the normal annual movement over the Santa Fe's line was from 1,500 to 3,000 cars.

[fol. 29] The movement of deciduous fruits begins in June and continues in substantial quantities until December. From June 15 to November 20, 1926, there were only nine days upon which less than 100 cars of deciduous fruit were originated by the Southern Pacific and Western Pacific for eastbound movement. One result of this heavy and continuous movement of deciduous fruits is the more even employment of refrigerator equipment throughout the year. There is a heavy movement of vegetables, cantaloupes, and citrus fruits at times when the cars are not used in the deciduous fruit traffic. There is now a trainload movement of perishable traffic from California each day of the year, although

the peak occurs at the time the deciduous-fruit movement is at its height.

Complainant contends that there has been an increase in the average loading per car, but excluding abnormal years, the loading figures have not changed materially in recent years. The average load in 1926 was 28,306 pounds. Defendants contrast this with the average load of 31,460 pounds shown in the prior report. Complainant predicts that with an increase in the minimum on grapes to 30,000 pounds, the resultant average load of all deciduous fruits will be increased to something approximating that figure. Whether that result would follow is questionable. It would be necessary that the average loading of grapes be increased to 31,140 pounds to bring the average loading of all deciduous fruits to 30,000 pounds. If the average loading of all fruits remained the same and grapes were loaded to the minimum, the average load would become 29,192 pounds.

During the greater part of the shipping season the movement of deciduous fruits is generally in trainloads and over main lines of railway after leaving the concentration point. While large numbers of solid trains of fruit leave California, they can not usually be carried through, because reconsigning orders necessitate taking some of the cars out of the train. About one-third of all the cars of fruit handled by the Santa Fe are switched out of trains en route short of eastern junctions. Out of cars originally billed to Chicago only 20 per cent are unloaded there. The others are diverted before or after arriving at Chicago.

As has been stated, the movement occurs at a time when weather conditions are conducive to efficient and economical operation. The peak movement is coincident with that of other commodities, and while conditions seem more favorable this in great measure results from the fact that maintenance work for the peak season is performed in advance. Defendants undertook to reallocate to the months in which the deciduous fruit moves an appropriate portion of the maintenance expenses incurred prior to the season of peak traffic and the operating ratios were shown to be not much different as a result.

Here as in the prior case defendants compare the rates assailed with those on deciduous fruits from Washington, Oregon, Idaho, Utah, and Colorado to eastern destinations. The following table, in general effect the same as that shown on page 86 of the report of our division, is representative:

[fol. 30]

Deciduous fruits from—	To Denver, Colo.			To Omaha, Nebr.			To Chicago, Ill.		
	Distance *Miles*	Rate	Revenue per ton-mile *Mills*	Distance *Miles*	Rate	Revenue per ton-mile *Mills*	Distance *Miles*	Rate	Revenue per ton-mile *Mills*
California [1]	1,332	$1.62	24.3	1,732	$1.73	20.0	2,220	$1.73	15.5
Yakima, Wash	1,340	1.58	23.5	1,730	1.69	19.5	2,308	1.875	17.0
Hood River, Oreg	1,343	1.58	23.5	1,733	1.69	19.5	2,211	1.875	16.9
Emmett, Idaho	937	1.125	24.0	1,337	1.35	20.2	1,817	1.50	16.5
Provo, Utah	701	1.06	30.8	1,239	1.35	21.7	1,735	1.50	17.2
Grand Junction, Colo	450	.845	37.5	987	1.35	27.3	1,483	1.50	20.2

Deciduous fruits from—	To Pittsburgh, Pa.			To New York, N. Y.		
	Distance *Miles*	Rate	Revenue per ton-mile *Mills*	Distance *Miles*	Rate	Revenue per ton-mile *Mills*
California [1]	2,688	$1.73	13.5	3,160	$1.73	10.9
Yakima, Wash	2,676	1.875	14.0	3,187	1.875	11.7
Hood River, Oreg	2,679	1.875	14.0	3,190	1.875	11.7
Emmett, Idaho	2,285	1.875	16.4	2,275	1.875	13.7
Povo, Utah	2,024	1.73	17.0	2,540	1.73	13.6
Grand Junction, Colo	1,772	1.73	19.5	2,288	1.73	15.1

[1] Average distance from California based on 742 miles to Odgen, Utah.

While there is a movement of various deciduous fruits from the foregoing States to eastern markets, its volume does not nearly approach that from California. The rates from Washington, Oregon, and Idaho, or the bases thereof, have been found not unreasonable by us. State of Idaho ex rel. v. Director General, 58 I. C. C. 342; State of Washington ex rel. v. Director General, supra; Wenatchee Valley Fruit Exchange v. N. P. Ry. Co., 83 I. C. C. 71. Defendants refer particularly to the $1.875 rate on deciduous fruits from Washington and Oregon to points in Groups A to E, found not unreasonable in the case last cited. Complainant's evidence in that case related principally to economic and trade conditions affecting the marketing of western apples in territory east of the Missouri River as to which a $1.50 rate was under attack. Moreover, the case was decided prior to the passage of the Hoch-Smith resolution, and the movement of deciduous fruits, other than apples, from the Northwest to eastern groups is small in comparison with that from California. The other cases cited were decided when the railroads had just emerged from Federal control, when rates were on the upward trend, and prior to the passage of the Hoch-Smith resolution. The conclusions were reached on the facts and conditions as developed on the individual records. They would not necessarily constitute precedents against the granting of relief if the same rates were assailed with an adequate showing of changed and different conditions of fact, or in the basic law applicable, and do not preclude our conclusion on this record.

The heavier average car loading, the higher earnings, and the shorter weighted-average haul resulting from the rates on citrus fruits and apples from California to the East have been previously shown. Defendants contend that the rates of $1.58 on oranges from California to the New York metropolitan district and to New England, and of $1.55 to other eastern points in the destination blanket are depressed. They seek to establish this by contrasting these rates with rates ranging from $1.12 to $1.187 from certain Florida points to the same destination territory, and by bringing into comparison the respective transportation services rendered. Complainant has referred to these citrus-fruit rates from California in contrast to the higher [fol. 31] rates charged on deciduous fruits. Considering the

level of the citrus-fruit rates from Florida, with the price levels of oranges, and the relatively prosperous condition of the California citrus-fruit industry as appears from this record, the citrus-fruit rates from California are at least not too high. But it does not follow that the earnings on citrus-fruit traffic will prevent any readjustment of the deciduous-fruit rates if present rates on the latter are not the lowest possible lawful rates compatible with the maintenance of adequate transportation service. Under the Hoch-Smith resolution the relative prosperity of an industry over a period of years may be considered as well as its relative adversity.

Defendants also bring into contrast the rates on deciduous fruits moving transcontinentally to Group A, and the earnings thereon, with the rates and earnings on 37 commodities moving from California to eastern defined territory, or in the reverse direction. The rates referred to range from 90 cents on rice and hops to $3.05 on scoured wool. In each instance they yield car earnings substantially in excess of the earnings produced by deciduous fruits. The ton-mile earnings produced by deciduous fruits were the same or higher than similar earnings for the other commodities in 27 instances. On a gross-ton mile basis the earnings for these commodities ranged from 3.5 to 9.8 mills, as compared with 4 mills on deciduous fruits, and were higher in every instance but four. Most of the commodities used are high-grade manufactured articles, or have different transportation characteristics such as value or volume of movement. The aggregate tonnage of all would not equal that of deciduous fruits. Defendants direct particular attention to the rates of $1.05 on canned goods and $1.25 on dried fruit. The former yields 6.8 mills per net-ton mile and 4.1 mills per gross-ton mile, and the latter 8.1 mills per net-ton mile and 5 mills per gross-ton mile for an average distance to Group A, 3,084 miles. Deciduous fruit yields 11.2 mills per net-ton mile and 4 mills per gross-ton mile. If allowance is made for empty haul, the gross-ton mile earnings on deciduous fruits become 2.7 mills, contrasted with 3.4 and 4.2 mills for canned goods and dried fruit.

Defendants also submit numerous comparisons with rates and earnings on grapes, peaches, and pears for shorter hauls from points in Arkansas and from points in the East and South. The carload minimum is generally 20,000

pounds. These comparisons are not materially different from those appearing on page 87 of the report in California Growers' & Shippers' Protective League v. S. P. Co., supra, as to which the division said: "It is difficult to compare these rates because of the differences in length of haul and other conditions surrounding the transportation." They range from 51.5 cents to $1.63 for hauls that vary from 134 miles up to 1,526 miles; and in some instances, at least, they are class rates.

Defendants claim that the measure of the existing rates upon deciduous fruits is amply justified in view of the services performed by the carriers. Both the Southern Pacific and the Santa Fe assemble loaded cars and distribute empty cars in special trains during the season of heavy movement. These carriers have extensive branch-line mileage in the fruit-producing regions. Fruit is picked [fol. 32] up along these branch lines and then concentrated for through movement. The Western Pacific and the Salt Lake accord some special service, but not to the same extent as the Southern Pacific and the Santa Fe. The efficiency of the pick-up trains is low in comparison with trains handling general traffic. The former are said to average from 28 to 78 per cent, and the latter from 70 to 91 per cent, of the engine ratings.

The operating difficulties pertaining to the line-haul service were developed of record in minute detail. In the prior report our division said, at pages 100 and 101:

Defendants introduced considerable evidence regarding the mountain grades and curves, trouble in securing water for their engine in desert places, cloudbursts and washouts at some seasons of the year, and various other operating difficulties encountered on the western lines. The grades and some of the other operating conditions on the Erie are also detailed. These conditions on the various lines require lightening of the tonnage of trains at some places, increases at others, and at certain places helper service is required. Other traffic moving over these lines is affected by the same conditions.

The showing on this record was along the same lines, and is possibly in more detail. All traffic moving over these lines is affected by the same conditions. Defendants do not differentiate as between deciduous fruits and other traffic,

but take the view "that deciduous fruits and all other traffic should pay rates commensurate with the service performed by the carriers and adequate to insure their continued efficient service."

Another factor stressed by defendants as increasing their expense of handling this traffic is the expedited schedules maintained for the deciduous-fruit traffic as compared with other fruit. The concentration points are Roseville on the Southern Pacific's Ogden route; Sacramento on the Western Pacific; Bakersfield and San Bernardino on the Santa Fe; and Colton on the Southern Pacific's El Paso route and on the Salt Lake. From these points a 154-hour schedule obtains to Chicago. Prior to 1918, the schedule was 138 hours over the Southern Pacific and Western Pacific, 152 hours 15 minutes over the Salt Lake, and 130 hours over the Santa Fe. All were increased to 180 hours during Federal control, and reduced to 154 hours in 1921 after conference with shippers. Similar changes were made in the schedule to New York, which contemplated third-morning delivery from Chicago prior to 1918, fifth morning during Federal control, and fourth morning since 1921. The additional speed required to maintain these schedules over and above normal operation averages from 2 to 4 miles per hour. The fast schedules maintained on deciduous fruits necessitate a reduction in the tonnage per train from the maximum rating of the locomotives. This reduction from the normal rating varies from 15 to 25 per cent for the different roads comprising the through route. The Chicago & North Western, for example, is allowed 31 hours out of the through schedule for its run between Council Bluffs, Iowa, and Chicago. Its manifest freight trains operating between the same points are allowed a schedule of 40 hours. In September, 1926, this carrier operated 213 trains averaging 35.2 cars of deciduous fruit and 0.2 car of other fruit per train. The average tonnage of these trains, including traffic used to fill out, was 2,257 tons, or 493 tons short of the normal locomotive rating for the 40-hour schedule. This shortage in tonnage was equivalent to thirty-eight 2,750-ton [fol. 33] trains. The following excerpt from the prior decision of the division is pertinent, page 98:

In connection with the carriers' showing as to reduced loadings due to the desire for increased speed, it may be

observed that locomotive efficiency is properly measured by ton-miles per hour. For example, from a purely transportation standpoint, the movement of 1,000 tons at 15 miles per hour is equivalent to the movement of 1,500 tons at 10 miles per hour. This takes no account of operating factors, such as comparative efficiency of fuel at varying speeds, or for certain other factors affecting final costs.

With the exception of tanks cars, the refrigerator cars used in the handling of deciduous-fruit traffic are the most expensive type of equipment in freight service. They cost about 60 per cent more than box cars and are proportionately more expensive to maintain and operate. The average weight of refrigerator cars is 52,053 pounds. The average weight of all other equipment owned by the Southern Pacific is 40,980 pounds. Because of the character of the commodities for which they are designed refrigerator cars are relatively restricted in their use, and the comparatively heavy weight of the shipment results in a disproportionate weight of equipment to the weight of the paying load. In 1926, the paying load was 34.9 per cent of the gross weight hauled as compared with 50 to 60 per cent for most commodities. In the case of bananas the percentage is 30.9 per cent, apples 41.4 per cent, and oranges 41.7 per cent. The preponderance of the eastbound movement, and the limited use to which refrigerator cars can be put for return loads, results in a high percentage of empty haul. In 1926, the empty haul was 67.58 per cent of the loaded mileage. For the three years 1924-26, inclusive, the empty movement of refrigerator cars on the Santa Fe, regardless of direction, was 63.2 per cent of the loaded movement, while all other cars averaged but 44.5 per cent empty to loaded movement. During the months when the deciduous-fruit movement is heaviest the empty westbound movement is likewise heaviest. The principal reason ascribed for the large westbound empty movement is the decrease since 1920 of westbound tonnage which now moves through the Panama Canal. In connection with all of these factors it should be stated that they apply as well to all perishable traffic as to deciduous fruits.

Defendants say that if it was not for the deciduous-fruit traffic 18,000 less cars would be required and that these cars must be stored after the movement is over. It is

equally true, of course, that if the carriers did not have any perishable traffic they could get along without any refrigerator cars. One exhibit shows the average number of cars stored per month on the Southern Pacific (Pacific system), Union Pacific, and Western Pacific. For the first eight months of 1926 the average number of cars in storage on the first and fifteenth days of each month was 6,581 as contrasted with 4,071 on the first and fifteenth days of the last four months, which takes in the period of peak movement of deciduous fruits. The showing as to the Santa Fe is not materially different. There is of course a more complete utilization of refrigerator equipment when the deciduous-fruit movement is at its height. In this connection we must notice that the seasonal demands for refrigerator cars throughout the country do not coincide in point of time; and that the carriers and the car lines have voluntary pooling arrangements and affiliations which have the effect of [fol. 34] ironing out demands. In spite of these arrangements there have been occasional car shortages.

The loss and damage claim payments by the four originating trunk lines and their short-line connections for the year 1926 were shown in contrast to the revenue for 1925. The claim payments in 1926 were largely on 1925 shipments. For all deciduous fruits, the claim payments constituted 2.77 per cent of the total freight revenue as compared with 2.62 per cent for apples and 2.6 per cent for citrus fruits. On grapes, the propondering tonnage of deciduous fruits, the claim payments were 2.66 per cent of the revenue. These figures do not include claim payments filed with other carriers and not charged to the California lines. For the Erie, which handles the heaviest tonnage east of Chicago, these payments amounted to $2.85 per car. Claim payments are substantially less in proportion to revenue than those referred to in the prior report of our division. The relationship of claims on deciduous fruit to those on other traffic remains about the same.

The special service accorded to deciduous-fruit traffic at the Chicago and New York terminals is referred to by defendants as another factor that makes for increased costs. The cost of this special interchange service at Chicago amounts to $1.02 per car for traffic interchanged with the Belt Railway as against 26 cents per car for cars handled in regular service. Similar conditions exist in connection

with the interchange with other lines. The cost per car in some instances runs as high as $2.30. The bulk of the traffic to New York is floated from Jersey City to the Erie's Duane Street station where the fruit auctions are located. The Duane Street piers are mainly devoted to this service during the season of heaviest movement. At times it is necessary to rent additional space. The annual rental of these piers amounts to about $3.22 per car handled, after allowances for rental obtained from the auction companies. Terminal facilities for the special handling of perishable traffic are also maintained at other large cities.

The numerous diversions and reconsignments are referred to by defendants as a substantial additional expense. In addition to the clerical work, the accomplishment of the instructions often entails extra switching. Of the cars of deciduous fruits handled by the Santa Fe in 1926, 75 per cent were diverted one or more times. Grapes alone were diverted one or more times in 78 per cent of the shipments, and deciduous fruits except grapes and apples were diverted in 55 per cent of the shipments. During the same time 58 per cent of the citrus-fruit cars were diverted. When total diversions handled are compared, however, there is little difference between the deciduous-fruit and the citrus-fruit traffic. The ratios of diversions to total cars handled in 1926 were 88 and 82 per cent, respectively. In the case of the other originating lines the number of cars diverted were 72 per cent of the total number handled. Each car was diverted 1.07 times, if total diversions are considered. No charge is made for diversions or reconsignments west of Chicago, and defendant estimated that 80 per cent of such changes in destinations are performed in that territory. East of Chicago a charge of $2.70 per car is assessed. Many of these diversions were due to em- [fol. 35] bargoes placed by the eastern carriers because of unfavorable transportation conditions temporarily existing on their lines, and to the permit system enforced to meet such situations.

Voluminous data were supplied as to increased cost of wages, supplies, and repairs. The average compensation in 1926 was shown to be 130.9 per cent of the average in 1915. Certain materials and supplies also cost more than in pre-war times. On the other hand, there have been some marked reductions in wages and materials since 1920. Fuel-

oil costs are important. The 1926 fuel-oil costs of the Southern Pacific, Santa Fe, and Salt Lake would have been about $16,000,000 greater if they had been based on 1920 unit prices. These matters affect all traffic and are reflected in the statistics of revenues and expenses hereinafter set forth.

Defendants urge that the charges for transportation have nothing to do with the existing economic conditions in the deciduous-fruit industry. They believe that the proposed reduction would not relieve the growers and claim that there is now entire freedom of movement. In support of this they point to the movement of cars for the past five years as follows: 1922, 53,961; 1923, 69,777; 1924, 66,786; 1925, 86,795; 1926, 78,803.[3]

According to complainant's view, however, "freedom of movement" as used in the Hoch-Smith resolution means more than the hauling of an unprecedented volume of traffic. The record establishes that producers are sustaining serious financial loss, that their indebtedness is increasing, that they are finding it difficult to meet taxes, that banks are foreclosing or assuming the management of properties, and that land values have been entirely deflated. Under such conditions complainant contends that freedom of movement does not exist. The sustained volume of the traffic is said to result in large part from the fact that the grower clings to his real property, and harvests and markets the crops grown thereon as they mature, trusting that some margin may be realized above his out-of-pocket cost. By far the greater portion of the crop is sold at auction. Manifestly the grower is unable to tell in advance what price will be obtained. Complainant calls attention to the decline of approximately 8,000 carloads in the movement of 1926 as compared with 1925. Thousands of carloads of grapes remained unharvested both in 1925 and 1926.

The contending parties do not agree as to the effect of the proposed reduction on the industry. An economist testified as an expert on behalf of defendants that a rate reduction would afford but temporary relief; that it would result in increased production with the eventual tendency of lowering market prices to the extent of the reduction; and that ultimately the buyers would reap the principal

[3] Includes 1,344 cars moved by express.

advantage. The market price of a commodity is, of course, affected by many factors. It is impossible to prophesy with assurance what results would flow from a reduction in rates. Since practically all deciduous fruits are sold on a delivered basis, complainant claims that a reduction in rates will prove of direct benefit to the producer, and it points to two instances in recent years where reductions in rates were followed both by increased production and by increases in price. In 1923 transcontinental carriers volun- [fol. 36] tarily reduced the rate on oranges from $1.73 to $1.55. The farm value of oranges increased from $2.10 per box in 1924 to $2.84 per box in 1925 and $3 per box in 1926. At the same time production increased from 18,100,000 boxes in 1924 to 24,000,000 boxes in 1926. The other illustration referred to by complainant relates to the reduction of 45 cents per 100 pounds, or approximately $100 per car, in the carload express rate on fruits and vegetables made by us in Express Rates, 1922, 83 I. C. C. 606. This reduction was said to have been of direct benefit to the cherry growers. The production of cherries has increased from 13,500 tons in 1924 to 19,000 tons in 1926 and the farm value per ton has concurrently advanced from $140 to $180. The division said, in its report in the former case, at page 93:

Assuming that the reduced rate would not be reflected in reduced selling prices, the reduction here sought, amounting to 29 cents per 100 pounds or $5.80 per ton on the bulk of the traffic, would afford substantial relief to the growers, who bear probably the major portion of charges directly or indirectly, and would mean the difference between a loss and a small profit to many of them.

The operating return of most of the principal carriers engaged in handling this traffic have increased in a marked degree during the last few years. The table below compares the 1926 net railway operating income of 10 of the principal systems that handle deciduous fruits with the average net incomes of the same carriers during the 12-year period 1914 to 1925. The percentage increase, 1926 over 1914, is also shown:

	Income average 12-year period	Income, 1926	Percentage increase, 1926 over average	Percentage increase, 1926 over 1914
Southern Pacific	$36,574,064	$48,128,841	31.59	46.50
Santa Fe	38,155,733	55,493,700	45.44	89.66
Western Pacific	2,395,033	4,337,205	81.09	1,191.35
Union Pacific	27,509,076	27,852,065	1.25	46.49
North Western	15,934,401	22,295,139	39.92	17.26
Milwaukee	14,497,122	18,394,933	26.89	[1] 30.28
Pennsylvania	48,044,312	106,432,758	121.53	128.39
New York Central	49,144,529	72,131,053	46.77	237.22
Erie	7,812,095	18,052,723	131.09	43.08
Baltimore & Ohio	22,014,093	50,805,337	130.79.	153.71

[1] Decrease.

Compared with the income in 1921, when rate levels were at their peak, the 1926 net railway operating income of each of the foregoing carriers was substantially in excess, with the single exception of the Union Pacific system. A consolidated statement shows that railway operating revenues of the four principal carriers that serve California have advanced from $420,498,800 in 1921 to $473,422,000 in 1926; that railway operating expenses were $321,341,884 in 1921 compared with $322,595,028 in 1926; and that net railway operating income was $70,298,291 in 1921 as compared with $110,520,485 in 1926.

The California commission also presented exhibits bearing upon the financial condition of the three California carriers which handle the bulk of the deciduous-fruit movement. They corroborate the showing in the above tabulation, and indicate that, from the standpoint of net railway operating income, 1926 was the peak year for the Southern Pacific, the Santa Fe, and the Western Pacific. The ratio of railway operating expenses to revenue for 1926 was 68.4 per cent in the case of the Southern Pacific, 64.4 per cent for the Santa Fe, and 70.2 per cent for the Western [fol. 37] Pacific. In the case of the Santa Fe and Western Pacific these ratios were slightly less in 1926 than for the years 1912, 1913, and 1914.

Defendants admit that there has been some improvement in the financial condition of the carriers from 1921 to 1926, but assert that a mere showing of increase in revenues or in net railway operating income means nothing unless it is accompanied with a statement of the return on the recorded property investment that is thereby produced. Defendants show that the rates of return on their property investments of some of the principal carriers for the years ending December 31, 1925 and 1926, were as follows:

	1925	1926
	Per cent	Per cent
Southern Pacific lines	3.70	[1]3.82
Santa Fe system	5.52	6.56
Western Pacific	3.66	3.64
Union Pacific system	4.74	4.87
North Western	4.10	4.25
Milwaukee	2.26	2.46
Illinois Central system	4.86	4.30
Erie system	3.37	3.43
Pennsylvania system	4.59	4.65
Baltimore & Ohio	5.33	6.03
New York Central lines	5.17	5.29

[1] Pacific lines, 4.04 per cent.

The Santa Fe and the Baltimore & Ohio are the only carriers shown as having earned in excess of 5.75 per cent in 1926. For 18 principal carriers in the western district, including the Illinois Central system, the average return in 1926 was 4.43 per cent and for five principal carriers in the eastern district 4.9 per cent. All the foregoing rates of return are computed with relation to the property investment accounts.

The report of our division heretofore referred to stated, at page 95:

As previously indicated, a substantial portion of the traffic under consideration originates on independent short lines. Some of these short lines are in very poor financial condition, and the reduction sought would seriously affect their revenues under existing percentage divisions.

That language is pertinent here. Of the traffic involved over one-sixth originates on short line railroads in California. At least four of these are now operating at a deficit.

Cost studies prepared in the same manner as those referred to at pages 95 et seq. of the prior report of the division were introduced by defendants. They reach conclusions not materially different. If these are accepted, the deciduous-fruit traffic is carried at a loss. They are based on the average cost of handling all traffic, and can not be accepted as showing the cost of the deciduous-fruit tonnage. Northern Pac. Ry. Co. v. Department of Public Works, 268 U. S. 39. It will be unnecessary to refer to them further, as the record affords an additional study made by the Santa Fe in 1923 which comes nearer to being constructed upon a sound basis than the others referred to.

This study purports to show that the average operating expenses involved in transporting a car of grapes over the Santa Fe from Bakersfield to Chicago, a distance of 2,331 miles, including the cost of assembling such cars at Bakersfield and the return-empty movement, amounted to $350.23, equivalent to 15.02 cents per car-mile. From this amount counsel for defendants indicated that it would be proper to deduct $5 per car for cost of repairs to refrigeration devices, and $4 per car for supervision, leaving the net operating expense $341.23 per car, equivalent to 14.64 cents per car-mile.

Complainant contends that cost, other than those that were susceptible of direct assignment, must have been allocated in excessive proportion to produce the result reached. [fol. 38] It points out that the total direct cost for train and enginemen's wages, and fuel, inclusive of the return-empty car haul, is $3,076.26 per train, or $55.92 per car, assuming a train of 55 cars. It claims that the disparity between this figure and $341.23, the total cost above shown, is so great as to arrest attention. Otherwise stated, complainant questions whether fuel and wages do not constitute more than 16 per cent of the entire aggregate cost. Complainant also refers to the increased prosperity for the carriers that has been concurrent with the deciduous-fruit movement. The operating ratio of all originating carriers and most of the others is lowest at the time of the peak movement of deciduous fruits. Complainant contends that this would be impossible if the traffic did not yield a substantial profit.

No details are given in the cost study so that a check can be made as to the mechanical or clerical accuracy of the results. The methods employed in reaching the results seems to be satisfactory. In part the expenses used in the cost study were the actual expenses on the different divisions of the roal attributable to the trains in which the 521 cars of grapes considered in the study were handled. Fuel and wages of train crews were directly assigned. Switching expenses were based on actual time involved and the average engine-hour cost at each of the points where the cars were switched. Locomotive repairs were based on the cost of repairs to the same type of engines as were used in hauling grape trains on the same divisions during the preceding 18 months. Car repairs and depreciation were based on 110 per cent of the average cost per car-mile on the system of all freight cars for the preceding 12 months, it having been previously determined that the maintenance costs of refrigerator cars were about 110 per cent of the average for all freight cars. This cost includes the repairs to refrigerator devices, deducted as indicated. Other items were reasonably apportioned to the grape trains. It seems that for application to the entire movement the ratio of empty-car to loaded-car miles used, 81.5 per cent, is too high. Using instead 67.58 per cent, which

was the ratio of empty to loaded movement in 1926, the average cost per car would be reduced to about $325, or 13.94 cents per car-mile. Applying this cost per car-mile to the average weighted haul in 1926, 2,970 miles, gives an indicated cost of $414.02 per car. The average revenue per car in 1926 under present rates was $489.59. Defendants direct attention to the fact that no allowance was made for taxes, rental of equipment, or joint facilities, and that the costs referred to were for the single-system haul of the Santa Fe.

The Arkansas interveners, interested in the shipment of peaches and grapes from that State, do not object to relief being granted to complainant, but place their rate situation before us with the claim that if California growers receive a reduction in rates that Arkansas growers should receive similar treatment. That may not be done within the present issues, or upon this word, except to the extent that defendants would have to reduce rates from intermediate points to prevent fourth-section violations.

The rates on peaches from Arkansas are $1.63 to New York, Philadelphia, and Baltimore, and $1.69 to Boston. The season of crop movement is usually not more than a month long, and is extremely uncertain because of climatic conditions. The peach-growing industry in Arkansas is [fol. 39] comparatively unimportant. In 1926, but 50 cars moved. Grapes, on the other hand, move in considerable volume. Of about 2,000 car loads originated in Arkansas in 1926, 95 per cent moved to points west of the Indiana-Illinois State line to which (with the exception of points in North Dakota and South Dakota) rates ranging from 61 cents to 95 cents apply for hauls of from 273 to 818 miles. East of that line to and including Buffalo, N. Y., and Pittsburgh, Pa., the rates range from $1.19 to $1.49. To points on the Atlantic seaboard and in New England the same rate applies as from California, namely, $1.73. The rates from Arkansas to the territory west of the Buffalo-Pittsburgh line are now under attack in No. 18529.

The Departments of Agriculture of New York, Pennsylvania, and Michigan, interveners on behalf of defendants, oppose any reductions in the rates on grapes from California. Grapes grown in these States compete with the California product. In 1926 this production amounted to

11,377 carloads, 3,012 carloads of which were shipped from Michigan and the remainder from New York and Pennsylvania. There are a few commodity rates, but generally speaking second-class rates are assessed. The average haul on New York grapes in 1923 was 354 miles, and the average rate was 68.5 cents.

The principal grape-growing area in the East is the Chautauqua-Erie belt, which extends almost from Buffalo, N. Y., to Erie, Pa. In Michigan the production is in the southwestern part of the State. The evidence introduced by these interveners is along the same lines as that detailed at pages 102 et seq. of the report of the division. It is to the effect that production in the East has not increased in years, while California shipments have increased tremendously; and that the farm prices in the past few years have not covered cost of production. These interveners contend that increasing distribution of California grapes has operated to reduce the prices received for their grapes in eastern markets. If the two years 1925 and 1926 are typical, the record does not sustain this contention. In 1925 California shipments were heavier than in 1926, yet the farm price received by the New York growers in that year was almost three times greater than that received in 1926. The grapes grown in New York are principally Concords, and the prices received seem to be affected more by conditions within the Concorn grape industry in the East than by competition with the California grapes.

Complainant has established that the growing of deciduous fruits is one of the great basic industries of California, and that this industry for the past five years has undergone a period of deflation and depression. Its economic situation is such that it clearly comes within the terms of the Hoch-Smith resolution as entitled to the lowest possible lawful rates compatible with the maintenance of adequate transportation service. While all the defendants who handle the bulk of the deciduous-fruit traffic have not as yet made the fair return, their present financial condition is relatively strong. It seems clear that the reduction requested, if granted, would not affect the maintenance of adequate transportation service. The primary issue to be determined, therefore, is whether the $1.73 rate assailed approaches the lowest limit or level of the zone of reason-

ableness permitted by the flexible limit of discretion reposed in us. The present $1.73 rate is the outgrowth of [fol. 40] the pre-war rate of $1.15, the history of which has been shown. It is now 50.4 per cent higher than that pre-war rate, and it is also considerably higher relatively to the pre-war level than the great body of transcontinental rates. During the period the $1.15 rate was in effect the average annual movement of deciduous fruits transcontinentally was about 16,380 cars, as compared with 86,795 cars in 1925, and 78,803 in 1926. Concurrently with the increase in the eastbound loaded movement there has resulted a greater empty westbound movement. Excluding abnormal years the average load has changed but little in the past 10 years, except on grapes. As to these, complainant now tenders an increase in the present minimum from 26,000 to 30,000 pounds. The other deciduous fruits will not load much above the existing 26,000-pound minimum, and it would be impracticable to increase the minimum as to them.

The important differences in conditions that have taken place since the hearing in the prior case maye be summarized briefly as follows:

1. The Hoch-Smith resolution was approved subsequent to the presentation of the prior case.

2. The depression in the deciduous-fruit industry has continued unabated for a further period of three years and conditions in 1926 were worse than in 1923. In the former decision our division found that the record did not justify the conclusion that the unfavorable financial conditions were likely to continue.

3. The present economic showing is fully responsive to the terms of the resolution. In the prior case the comparative levels in market values over a reasonable period of years were not shown.

4. Complainant offers to submit the decidouous-fruit industry to an increase in the carload minimum on grapes from 26,000 pounds to 30,000 pounds.

5. There has been a further increase in the volume of movement from a total of 69,777 cars in 1923 to 86,795 cars in 1925 and 78,803 cars in 1926.

6. The financial condition of the carriers principally concerned has further improved.

7. Complainant has submitted a more comprehensive rate showing.

8. The average weight of the paying load of deciduous fruit has dropped from 31,460 pounds in 1922 to 28,306 pounds in 1926.

9. There has been an increase in the weighted-average haul shown as 2,965 miles for grapes and 2,909 miles for all deciduous fruits except apples, in the prior case 3,000 miles for grapes and 2,970 miles for all deciduous fruits except apples in 1926. Otherwise stated, in 1926, there was 61 miles of additional service for each ton of fruit handled.

The various factors relied upon by the respective parties have been detailed at length. Considering the relative rates on and earnings of the deciduous-fruit traffic in the light of the condition of the industry and of the service performed by the carriers, and giving due weight to the cost study presented by defendants, we are of the view that the present rates are in excess of the lowest possible lawful rates as herein defined. The heavy increase in the volume [fol. 41] of movement, the heavier loading of grapes, coupled with the increase in minimum to 30,000 pounds, and the other matters detailed herein, point to the conclusion that, in the light of the principles that must govern the present rates are too high. Traffic and transportation conditions with respect to deciduous fruits, but more especially to grapes, have undergone a material change in the past 10 years and many of these changes have been to the carriers' advantage. Defendants have granted a voluntary reduction in rates to the citrus-fruit industry, based upon the increase in the carload minimum and on a movement which while large is not nearly as large as the transcontinental movement of deciduous fruits. The citrus-fruit industry is shown to be in a condition of relative prosperity. The deciduous-fruit industry on the other hand is in serious financial straits.

This record would support a somewhat greater reduction in the rates on grapes than on deciduous tree fruits. But

the growing of grapes is but a part of the basis deciduous-fruit industry in California. Grapes and the other deciduous fruits are close enough in their transportation characteristics to bear a comparable relation as a classification matter. Our conclusions will reflect these considerations, which tend to offset each other in the instant case.

We are of the opinion and find upon a consideration of the whole record that the rate of $1.73 as applied to the transcontinental shipment of deciduous fruits from California to Groups A to M, inclusive, except Group J is, and for the future will be, unreasonable to the extent that it exceeds or will exceel $1.60; and that the rate of $1.62 currently applicable to Group J points is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.50 and that such rates are the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and are necessary to promote the freedom of movement by defendants of the specified products of agriculture, now affected by existing depression in agriculture. In publishing these rates defendants may increase the carload minimum on grapes to 30,000 pounds.

An appropriate order will be entered.

EASTMAN, Commissioner, concurring:

While it is by no means clear that the rates in issue are unreasonable and ought to be reduced, complainant is entitled under the Hoch-Smith resolution to the benefit of the doubt, and I can for that reason accept the results reached. I am influenced in this conclusion, also, by the fact that the record contains no attack on the enormous destination blanket to which these rates apply. Certain incidents of that blanketing, however, ought to be pointed out. The burden clearly falls chiefly on the eastern lines. They participate in the rates where they are lean and not where they are fat. When the fruit stops at such points as Denver, Kansas City, Omaha, or Chicago, the western lines keep the entire rate; but for their hauls the eastern lines never receive more than an attenuated division. The eastern lines might, therefore, with reason have attacked the [fol. 42] blanket, but this they did not see fit to do. On the contrary they apparently left the defense of the case largely to the western lines. Out of 15 counsel whose names are

signed to the brief of defendants, only one represents an eastern line.

Out of the reduced rate of $1.60 the eastern lines will receive 27.5 per cent east of Chicago when the fruit moves to New York City, or 44 cents for a short-line distance of about 900 miles. As the majority report shows, the average rate on grapes from points in New York State to New York City is about 68.5 cents for an average haul of 354 miles. Granting that there may be less terminal service incident to the haul of western fruit from Chicago than to local hauls of fruit in New York State, that fact falls far short of accounting for the disparity above indicated. The eastern growers of fruit are suffering from financial depression quite as much as the California growers, and, it seems to me, have less opportunity than the latter for remedying their situation by expedients other than a reduction of freight rates. So far as juice grapes are concerned, the California growers apparently dominate the market and are suffering chiefly from overproduction and competition among themselves. The eastern growers have no such dominating position in any branch of the fruit industry, and must bear the burden also of less favorable climatic conditions.

Both we and the eastern carriers must face squarely the fact that if the reductions herein ordered are justified, it is very probable that an even stronger case for reductions in fruit rates can be made throughout the eastern territory.

WOODLOCK, Commissioner, concurring:

The Hoch-Smith resolution (which governs the disposition of this case) contains other injunctions addressed to us besides that which requires the lowest possible lawful rate on products of agriculture suffering from depression. Twice the resolution instructs us that in adjusting rates care shall be taken to maintain an "adequate system of transportation." If these words mean any thing they mean that, broadly speaking, we must shift some of the burden now borne by agricultural products suffering from depression to other classes of traffic, meanwhile maintaining carrier revenues reasonably intact failing evidence that these revenues are excessive. The new standard of measurement for rates on agricultural products implies new standards for

rates on other commodities. It seems to me that this is something which we should have in mind not merely in cases where tariffs proposed by carriers are under suspension and investigation, but also in cases where rates are attacked upon formal complaint. The Hoch-Smith resolution is addressed to this commission, and not to the carriers. It is we who must readjust the rate structures according to the terms of that resolution, and we can not shift the burden to the carrier executives. It is our business to see that readjustment of the rate structures shall be conducted in a manner consistent with the maintenance of an adequate system of transportation. This is something which should be clearly understood by all parties concerned, carriers and shippers alike. Naturally we are entitled to expect the as-
[fol. 43] sistance of both in arriving at an equitable readjustment of rate structures, but to be intelligent that assistance must be based on an understanding of the true nature of the problem.

I am authorized to state Commissioner Taylor's concurrence in this expression.

McManamy, Commissioner, dissenting:

This case is in effect a retrial of No. 15377, Calif. Growers' & Shippers' Protective League v. S. P. Co., 100 I. C. C. 79. The record contains few if any additional facts which will support the conclusions here reached.

The rate comparisons are mainly the same as those considered in the previous case, the principal new ones being the rates on bananas and cocoanuts from Gulf ports to Pacific coast ports. The rate of $1.875 from and to these points is higher than the rate of $1.73 on deciduous fruits from California to most of the destination territory here under consideration, but as the minimum loading of bananas and cocoanuts is only 20,000 pounds and they do not load much above the minimum, the earnings per car and per car-mile are somewhat lower. The average distance from the Gulf ports to the Pacific ports is about the same as the weighted-average haul on the traffic here under consideration but the banana rate is blanketed to all of the territory west of Chicago except New Mexico, a portion of Colorado, and a portion of Texas. Therefore the average haul to all points within the blanket is much less than to the ports

which are the most distant points in the blanket. The banana rate is made to meet water competition as this fruit may be and is moved to the Pacific coast by boat.

The report also refers to the earnings under the rate on pineapples from the Gulf ports and Jacksonville, Fla., to Pacific coast points but it does not state the amount of the rate. Neither does it say there is any movement. It seems unlikely that pineapples could be imported and shipped across the country by rail in competition with Hawaiian pineapples moving direct to the Pacific ports by water.

The present record also differs from the previous one in that both complainant and defendants have extended various rates on deciduous fruits for shorter hauls to the average haul on the traffic under consideration upon the basis of different rates of progression. Defendants' comparisons are not shown in the majority report but some of complainant's comparisons are shown, although it is recognized that they are not constructed on a proper rate of progression. In the Consolidated Southwestern Cases, 123 I. C. C. 203, the scale prescribed on grapes is 50 per cent of first class, which, extended to 3,000 miles, would result in a rate of $2.565. This does not include the differential provided for hauls in the sparsely settled territory.

The majority report does not show the class C rates from California to the eastern transcontinental groups but they are shown at page 84 of the previous report. The class C rate to Group A is $1.80, to Group B $1.76, to Group C $1.73, to Group D $1.65, and so on until it reaches $1.17 to Group J.

The rates which the majority condemn as being too high are lower than the deciduous-fruit rates from the principal producing areas to the same destinations. For example, [fol. 44] the rate on grapes from Arkansas to New York is $1.73, although the distance is much less than from California. The rate on New York grapes for an average haul of 354 miles is 68.5 cents, which is 47 per cent of the first-class rate for that distance under the Consolidated Southwestern scale. The rate on peaches from Fort Valley, Ga., to 16 points mainly in central territory would, if projected to the transcontinental distance on the basis of the class C scale prescribed in the Consolidated Southwestern Cases, supra, result in a rate of $1.96. The rate on deciduous fruits from Utah and Colorado to Pittsburgh and the East

is $1.73; from Idaho to Pittsburgh and the East it is $1.875; and from Oregon and Washington to Chicago and the East it is $1.875. The rates from Idaho, Oregon, and Washington were found not unreasonable in State of Idaho ex rel. v. Director General, 58 I. C. C. 342, State of Washington ex rel. v. Director General, 58 I. C. C. 701, and Wenatchee Valley Fruit Exchange v. N. P. Ry. Co., 83 I. C. C. 71. Referring to the above cases the majority state:

> They would not necessarily constitute precedents against the granting of relief if the same rates were assailed with an adequate showing of changed and different conditions of fact or in the basic law applicable * * *.

This constitutes practically an invitation to reopen the question of the reasonableness of those rates, and this without doubt must be done if we are to avoid undue preference and prejudice as between localities.

The majority report as well as the concurring expressions show that the decision is predicated upon the Hoch-Smith resolution. To my mind too much weight is given to the provision relating to the level of the rates and too little to other provisions of that resolution.

We are directed to correct existing rates which are "unjustly discriminatory or unduly preferential, thereby imposing undue burdens or giving undue advantage as between various localities or parts of the country," yet we are here reducing rates on deciduous fruits that are already lower than the rates on the same commodities for shorter hauls from other sections of the country—in fact, are lower, distance considered, than the rates on deciduous fruits from any section of the country to the same destinations.

The resolution also directs us to give due regard "to the maintenance of an adequate system of transportation." What is involved in the maintenance of adequate transportation service for deciduous fruits? The report refers at length to the expense of the service and the character of the equipment used, but I do not think this has been given proper weight. We are dealing here with commodities which move only under intensive refrigeration, in the most expensive and highest type of equipment, and at the highest practicable speed.

The movement of perishables under refrigeration has increased until it amounts to 1,000,000 carloads per annum. Ten years ago a very large percentage of the refrigerator cars of the country was of an inferior type with insufficient insulation, which made the satisfactory movement of certain commodities impossible without excessive losses. Dur- [fol. 45] ing Federal control the railroad administration, the Department of Agriculture, the carriers, and the refrigerator-car companies jointly designed a standard type of refrigerator car of a much higher class than was previously in general use. Since that time practically all new cars have been built to the standard prescribed and most of the old ones have been rebuilt to the same standard. In the interest of the public these improvements should continue. Prompt movement and adequate protection of perishable commodities which require intensive refrigeration will be of far more benefit to the grower, the shipper, and certainly to the public than the reduction in the rates here prescribed. If the rates here established are to be made the basis of the future level of rates on these commodities throughout the country, I very much doubt if the desired standard of equipment and service can be maintained without placing a part of the burden on other traffic which I do not understand was contemplated by the Hoch-Smith resolution.

The report discusses freedom of movement, which is another important requirement of the Hoch-Smith resolution. The increase in production and shipment of California deciduous fruits, especially juice grapes, is one of the outstanding features of the case. In the previous report it was said, at page 92: "Some vineyards have already been abandoned and it is predicted that there will be a decrease in production unless relief is secured." Notwithstanding this prediction, the record discloses that the shipments of juice grapes increased about one-third from 1924 to 1926 and that the number of acres in grapes increased from 434,907 in 1923 to 635,236 in 1926. The increase in production has been vastly greater in proportion than the increase in population of the country. In 1916 the total of carload shipments of deciduous fruits from California was 17,891 cars. In 1926 it was 78,803 cars. Of these 9,722 carloads in 1916 and 58,334 carloads in 1926 were grapes. The rec-

ord shows that each year embargoes were placed on grapes at the principal eastern cities because the supply could not be disposed of and that diversions in search of a market amounted to 1.07 times per car. Surely there is no indication here that freedom of movement has been in any way restricted.

In my opinion the finding of the majority is not supported by the record in this case. It does not find support in any previous decision of ours, nor can it be predicated upon the Hoch-Smith resolution if all of the provisions of that resolution are given proper weight.

Commissioners Meyer, Hall, Campbell, and Brainerd did not participate in the disposition of this case.

[fol. 46] EXHIBIT B TO PETITION AND BILL

INTERSTATE COMMERCE COMMISSION

No. 19130

CALIFORNIA GROWERS' & SHIPPERS' PROTECTIVE LEAGUE

vs.

SOUTHERN PACIFIC COMPANY et al.

Decided November 14, 1927

Findings in previous report, 129 I. C. C. 25, that rates on fresh deciduous fruits, other than apples, in carloads, from California to transcontinental Groups A to M, inclusive, are unreasonable and that rates prescribed are lowest possible lawful rates compatible with maintenance of adequate transportation service and necessary to promote freedom of movement of products of agriculture affected by depression, affirmed upon further consideration.

Appearances, As in former report.

Report of the Commission on Further Consideration

ATTCHISON, Commissioner:

In our original report in this case, 129 I. C. C. 25, entered July 20, 1927, upon consideration of the whole record, we

found unreasonable the rates of $1.73 on fresh deciduous fruits from California to transcontinental groups A to M, inclusive, and $1.62 to group J, and we prescribed rates for the future not to exceed $1.60 and $1.50, respectively. We further found that such reduced rates are the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and are necessary to promote the freedom of movement by defendant of these products of agriculture, now affected by depression. We also authorized defendants to increase the carload minimum weight on grapes, from 26,000 to 30,000 pounds. On October 14, 1927, upon petition of the Great Northern and other defendants serving the Pacific Northwest, with the consent of the complainant, the order was modified so as not to require the application of the reduced rates over routes by north Pacific coast gateways. All of the defendants have petitioned for reconsideration.

In considering defendants' cost study, discussed on pages 52 and 53 of the previous report, we said:

It seems that for application to the entire movement the ratio of empty-car to loaded-car miles used, 81.5 per cent, is too high. Using instead 67.58 per cent, which was the ratio of empty to loaded movement in 1926, the average [fol. 47] cost per car would be reduced to about $325, or 13.94 cents per car-mile. Applying this cost per car-mile to the average weighted haul in 1926, 2,970 miles, gives an indicated cost of $414.02 per car. The average revenue per car in 1926 under present rates was $489.59.

In their petition defendants question the propriety of the substitution of the figure of 67.58 for 81.5 as the ratio of empty-car to loaded-car mileage. It is true that this suggestion of a reduction of the allowance for the return of empty cars was unwarranted. The two figures are not comparable. The higher figure is the ratio of the westbound empty-car mileage to the total westbound mileage. The substituted figure represents the ratio of total empty-car mileage both eastbound and westbound to the total loaded-car mileage in both directions.

The carriers state that the effect of the erroneous substitution amounted to $20.79 per car, and that if we had merely changed the percentage of empty mileage on the

Santa Fe, 68.78, to 67.58, the percentage for all the lines engaged in this traffic, the $414.02 found in the opinion would have become $433.68 per car. This may be compared with revenue, at existing rates, of $489.59. The difference, $55.91, would be available for taxes, rental of equipment or joint facilities, and interest and this difference would not be eliminated by the prescribed reductions, especially if we assume that the increased minimum load would make some increase in the average revenue per car. In other words, even if the cost study were accepted without question, it would indicate that the prescribed rates are slightly above the operating expenses and would confirm the impression obtained from comparisons with other rates that the new rates, while probably of less than average profitableness, would still leave the traffic attractive to the carriers.

But we have not accepted the cost study as indicating precisely the actual expense of handling this traffic. While we approved in general the methods employed, we pointed out that no details were given and consequently no check could be made as to the mechanical or clerical accuracy of the result. The study is confined to a small number of trains on a single railroad. It relates to 1923, and it is at least doubtful whether the more economical operations of 1926 would not have affected the expense apportioned to the fruit traffic. In 1926 the operating ratio of the Santa Fe was 65.15 as compared with 72.51 in 1923.

The $433.68 referred to above as the corrected expense per car for a distance of 2,970 miles is based on a car-mile cost found for a haul of 2,331 miles including handling on the expensive originating division with cost of 35.85 cents a car-mile. If the mileage and cost of this division be set aside before computing the car-mile cost to be applied to the remainder of the 2,970-mile haul, the $433.68 would become $426.48, and the profit of $55.91 would be increased to $63.11. There remains the further question whether the line-haul cost per car-mile for the additional mileage over the carriers east of Chicago would be greater or less than that found for the Santa Fe. There is testimony in the record as to the cost of haulage on the Erie, but the figures were justly criticized by complainants as not closely enough related to the traffic in question.

[fol. 48] Some additional possible defects in the study have come to our attention. The cost per car-mile of refrigerator repairs was computed upon the basis of 110 per cent of the average cost per car-mile of repairing all freight cars on the ground that "refrigerator freight cars cost about 110 per cent of the average cost to maintain freight cars." Apparently no consideration was given to the fact that with a difference in the average haul of the fruit traffic as compared with that of all traffic, the car repair cost per car-mile for this traffic may be less than for all freight cars even though the per-car cost is 10 per cent greater. We also note that 10 per cent was added for the expense of carrying company material. It is questionable whether so large an allowance for this purpose would be generally applicable.

While consideration was given to the cost study submitted by defendants, it was not the controlling factor in our decision. Numerous other pertinent matters of record were given proper weight. The other questions raised by defendants in their petition for reconsideration, including the interpretation and application of the governing laws, were fully considered and determined in the original report.

On the whole record, we adhere to our former finding that the present rates are unreasonable and we are not convinced that the rates prescribed are below what are necessary to afford complainants the lowest possible lawful rates compatible with the maintenance of adequate transportation service.

The previous findings and the order, as modified by order of October 14, 1927, are affirmed.

EASTMAN, Commissioner, dissenting:

When this case was first decided, I was, as I then indicated in a concurring expression, by no means clear that the rates attacked were unreasonable, but gave complainant the benefit of the doubt because of the Hoch-Smith Resolution. The further consideration which I have since given to the case leads me to agree substantially with Commissioner McManamy, who has dissented. I would have little difficulty in finding the $1.73 rate unreasonable for the shorter hauls in the blanket, but I do not believe that it is unreasonable, even in the light of the Hoch-Smith resolu-

tion, for the longer hauls to the Atlantic seaboard and trunk-line territory, and that is where the great bulk of the shipments find their destination, nor as a blanket rate.

McManamy, Commissioner, dissenting:

The corrections herein made and the comments thereon add force to the facts presented in my dissenting expression in our former report.

Commissioner Hall did not participate in the disposition of this proceeding.

By the commission:

George B. McGinty, Secretary. (Seal.)

[File endorsement omitted.]

[fol. 49] In United States District Court

[Title omitted]

Motion of California Growers' and Shippers' Protective League, an Association, for Leave to File Petition in Intervention—Filed Dec. 7, 1927

Now comes the undersigned, California Growers' and Shippers' Protective League, an association organized under the laws of the State of California, by Messrs. McCutchen, Olney, Mannon & Greene and Allan P. Matthew, its attorneys, and moves the above entitled court for an order permitting it to file herein its petition in intervention herein, copy of which said petition is presented herewith.

Dated December 7, 1927.

McCutcheon, Olney, Mannon & Greene, Allan P. Matthew, Attorneys for said California Growers' and Shippers' Protective League.

[File endorsement omitted.]

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING MOTION OF CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE FOR LEAVE TO FILE PETITION IN INTERVENTION AND ORDER TO SHOW CAUSE—Filed Dec. 7, 1927

California Growers' and Shippers' Protective League, an association duly organized and existing under and by virtue of the laws of the State of California, having by its counsel moved for an order of the above entiteld court permitting it to file its petition in intervention as a party defendant in the above entitled cause, and the same having been duly considered;

Now, therefore, it is hereby ordered as follows:

1. That said motion of said California Growers' and Shippers' Protective League be and the same is hereby granted;

2. That the petitioners and the defendants in the above entitled action be and they are hereby, and each of them is, ordered to appear on Tuesday, the 20th day of December, [fol. 51] 1927, at 10:00 o'clock in the forenoon of said day, at the courtroom of the above entitled court, situated in the Post Office Building, in the City and County of San Francisco, State of California, then and there to show cause, if any they have, why said petition in intervention of said California Growers' and Shippers' Protective League should not be granted and said California Growers' and Shippers' Protective League be permitted to intervene in the above entitled action as a party defendant therein, with like effect as if it had been named a party defendant in the petition and bill for injunction on file in said action, and to file its answer to said petition and bill for injunction;

3. That a copy of the said petition in intervention of said California Growers' and Shippers' Protective League and a copy of this order to show cause be served upon the attorneys of record herein for the petitioners named in said petition and bill for injunction on file herein, and upon the Attorney General of the United States of America and the attorneys for the Interstate Commerce Commission of the

United States, the defendants named in said petition and bill, not less than two days prior to the date fixed for the hearing upon this order to show cause, as aforesaid.

Dated December 7, 1927.

A. F. St. Sure, United States District Judge.

[File endorsement omitted.]

[fol. 52] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE, A NON-PROFIT ASSOCIATION, FOR LEAVE TO INTERVENE AS A PARTY DEFENDANT—Filed Dec. 7, 1927.

The petition of the California Growers' and Shippers' Protective League, a voluntary, non-profit association, respectfully shows:

I

That petitioner is and at all times herein and in the complaint herein mentioned, subsequently to the 14th day of October, 1921, was a voluntary, non-profit association duly organized and existing under and by virtue of the laws of the State of California with its principal place of business in the City and County of San Francisco, State of California; that the membership of said petitioner comprises and at all of said times has comprised growers and shippers of deciduous fruit in the State of California, and asso-[fol. 53] ciations of such growers and shippers, and that said petitioner was organized in the interest of the California deciduous fruit industry and since its organization has at all times been engaged in and is now engaged in activities connected with the protection and advancement of the interests of such industry.

II

That on or about December 27, 1926, petitioner filed with the Interstate Commerce Commission the complaint in the proceeding numbered No. 19,130, and referred to in the petition and bill for injunction on file herein; that on July 20,

1927, said Commission rendered its opinion and made its order in said proceeding; that in and by said petition and bill for injunction on file herein, the petitioners named therein are seeking the order of this court suspending, setting aside and annulling said order of said Commission in said proceeding No. 19130, and that this petitioner, having been and being as aforesaid the complainant in said proceeding No. 19130 before said Interstate Commerce Commission, is entitled to intervene herein and to be made a party defendant herein with like effect as if this petitioner had been named a party defendant to said petition and bill for injunction on file herein.

III

That the rights of this petitioner and of its members under the order of said Commission above referred to in said Docket No. 19130 are substantially involved in the above entitled action for the reason that should the relief prayed for in this action be granted and said order of said Commission in said proceeding No. 19130 be vacated or set aside or annulled in this action, the reduction in rates required by the order of said Commission in said proceeding No. 19130 would be lost to petitioner and to its members.

[fol. 54] IV

That if permitted to intervene in this action petitioner proposes to file an answer to said petition and bill for injunction on file herein; that attached hereto and referred to and made a part hereof is a copy of an answer substantially in the form in which petitioner herein proposes to file if permitted to intervene herein as a party defendant hereto.

Wherefore petitioner prays for the order of this Honorable Court as follows:

(1) That this court forthwith issue its order to show cause, returnable at a time to be fixed by the Court in said order, at the courtroom of this court, directed to the petitioners and to the defendants to this action, and directing said petitioners and said defendants and each of them to show cause, if any they have, why this petition in intervention should not be granted and why this petitioner should

not be permitted to intervene herein as a party defendant with like effect as if it had been named as a party defendant to said petition and bill for injunction on file herein; and that in and by said order to show cause it be provided that notice thereof and of the hearing thereof be given to said parties to this action by serving a copy of this petition and of said order to show cause upon the attorneys of record for said petitioners named in the petition and bill for injunction on file in this action not less than two days prior to the time of said hearing, and that notice be given to the defendants in said action by service upon them and upon each of them of a copy of this petition and of said order to show cause not less than two days prior to the time of said hearing.

[fol. 55] (2) That upon the hearing of said order to show cause this Honorable Court make its order permitting this petitioner, California Growers' and Shippers' Protective League, to intervene in this action as a party defendant thereto, with like effect as if said petitioner had been named as a party defendant in said petition and bill for injunction on file herein, and that upon the making of said order said petitioner be permitted to file its answer in this action to said petition and bill for injunction.

(3) For such other and further relief as may be meet and equitable in the premises.

And your petitioner will ever pray, etc.

California Growers' and Shippers' Protective League, by Frank H. Buck, President. McCutchen, Olney, Mannon & Greene, Allan P. Matthew, Attorneys for Petitioner, California Growers' and Shippers' Protective League.

[fols. 56-78] *Duly sworn to by Frank H. Buck. Jurat omitted in printing.*

"Attached to the foregoing petition to intervene is a copy of the answer of California Growers' & Shippers' Protective League, which appears herein at pages 88 to 108.

[fol. 79] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER PERMITTING INTERVENTION OF CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE—Filed Dec. 20, 1927

California Growers' and Shippers' Protective League, a voluntary non-profit association, having heretofore filed herein its verified petition for leave to intervene herein as a party defendant to the above entitled proceeding, having first obtained the order of the above entitled court permitting it to file said petition, and it appearing to the court and the court now finding that said California Growers' and Shippers' Protective League was and is the party upon whose application the order of July 20, 1927, of the Interstate Commerce Commission which petitioners herein seek to have vacated and set aside in the above entitled proceeding, was made and that said California Growers' and Shippers' Protective League is entitled of right to be made a party defendant to the above entitled action; that upon the filing of petition of said California Growers' and Shippers' Protective League the above entitled court gave and made and filed its order directing the petitioners and the defendants in the above entitled action to appear and show cause, if any they had, why said petition should not be granted, and [fols. 80 & 81] that said order to show cause was duly served upon said petitioners and defendants as provided therein;

That said petitioners and said defendants, and each of them, appeared in response to said order to show cause and offered no objection to the granting of said petition; and good cause appearing therefor,

Now, therefore, it is hereby ordered that said petition of said California Growers' and Shippers' Protective League be, and the same is hereby, granted, and that said California Growers' and Shippers' Protective League be, and it is hereby, permitted to intervene in the above entitled action as a party defendant therein, with like effect as if it had been named as a party defendant in the petition and bill for injunction on file herein, and that said California Growers' and Shippers' Protective League be, and it is hereby per-

mitted to file in this action its answer to said petition and bill for injunction.

Done in open court this 20th day of December, 1927.

Frank H. Rudkin, United States Circuit Judge. A. F. St. Sure, United States District Judge. Frank H. Kerrigan, United States District Judge.

[File endorsement omitted.]

[fol. 82] In United States District Court

[Title omitted]

Answer of the United States—Filed Dec. 19, 1927

United States of America, defendant, for answer to the petition and bill for injunction filed herein against it says:

1. Defendant admits the facts alleged in paragraph I in manner and form as alleged.

II. Defendant admits the matters and things alleged in paragraph II with this exception: defendant denies the jurisdiction of the Court or any part thereof depends upon the fact that this action arises under the Constitution and laws of the United States and alleges that if there is jurisdiction it arises solely under the Commerce Court Act (36 Stat. 539); Urgent Deficiencies Act of October 22, 1913 (38 Stat. 219, 220), and Title 28, Section 41, paragraph (28); and Sections 43 to 47, inclusive, United States Code in force December 7, 1925.

III. On information and belief, defendant admits the facts alleged in paragraph III in manner and form as alleged.

IV. On information and belief, defendant admits the facts alleged in paragraph V in manner and form as alleged. with the qualification that the general interest of and effect upon each of the four hundred and fifty (450) carriers must [fol. 83] obviously and necessarily be slight.

V. On information and belief, defendant admits the facts alleged in paragraph V in manner and form as alleged.

VI. Defendant has no knowledge of the facts alleged in paragraph VI in manner and form as alleged, it neither admits nor denies the same and if they become material upon the hearing it will require strict proof thereof with this exception: defendant denies the allegations "The carriers for more than fifteen years last past have fostered and encouraged the growth of the deciduous fruit industry in California, by establishing and maintaining rates for the transportation of said fruit in carload lots from California to eastern points, which rates have been consistently less than reasonable rates for said carriage"; and "Such rates have promoted and maintained a free movement of said fruits, and have contributed largely to the increase in the quantities of such fruits which have been transported by rail to eastern points."

VII. Defendant denies the allegations of paragraph VII and each and every part of the same in manner and form as alleged with this exception: defendant admits that for the period stated the tariff rates were $1.73 per 100 pounds, and $1.62 per 100 pounds, respectively, from California to eastern points and were subject to a minimum of 26,000 pounds per car.

VIII. Defendant admits the allegations of paragraph VIII in manner and form as alleged with this exception: defendant denies the allegation "the Commission * * * found that said deciduous fruits were moving freely in interstate commerce under said rates, that the volume of traffic had increased rapidly during recent years thereunder, and that the rates complained of were not unreasonable and were not unduly prejudicial." Defendant alleges the allegation does not constitute or reflect the substance in its entirety of the report and order of the Commission in the case referred to; defendant alleges the full findings, purport and effect of the report and order in the case referred [fol. 84] to are shown on the face thereof and for greater certainty defendant refers in its entirety to the official report styled "California Growers' and Shippers' Protective League v. Southern Pacific Company, et al.," as the same is reported in 100 Interstate Commerce Commission Reports at page 79, et seq.

IX. Defendant admits the facts alleged in paragraph IX in manner and form as alleged with these exceptions: (a) defendant alleges the allegations with respect to the complaint filed in the proceeding referred to in paragraph IX do not constitute or reflect the substance in its entirety of the complaint before the Commission and defendant, therefore, refers to the complaint as a whole for the full contents and purport thereon; (b) subject to verification, defendant admits that Exhibits A and B attached to the petition are true and correct copies of the reports of the Commission of July 20, 1927 and November 14, 1927, respectively, in the proceeding referred to.

X. Defendant denies the matters and things alleged in paragraph X and each and every part of the same in manner and form as alleged.

XI. Defendant denies the matters and things alleged in paragraph XI and each and every part of the same in manner and form as alleged.

XII. Defendant denies the matters and things alleged in paragraph XII and each and every part of the same in manner and form as alleged.

XIII. Defendant denies the matters and things alleged in paragraph XIII and each and every part of the same in manner and form as alleged.

XIV. Defendant denies the matters and things alleged in paragraph XIV and each and every part of the same in manner and form as alleged.

[fol. 85] XV. Defendant denies the matters and things alleged in paragraph XV and each and every part of the same in manner and form as alleged.

XVI. Defendant denies the matters and things alleged in paragraph XVI and each and every part of the same in manner and form as alleged with this exception: defendant admits the order in controversy on its face requires the carriers to put the new rates into effect on or before January 10, 1928; but defendant alleges that on or about December 8, 1927, the Interstate Commerce Commission, by appropriate action in that behalf, postponed the effective date of the order to and including February 10, 1928.

Further answering, defendant alleges that the matters and things set forth in the petition and sought to be put in issue before the court were all before the Interstate Commerce Commission, were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the Interstate Commerce Act; in its reports in writing, made after full hearing and on due notice to all of the parties, which state its conclusions together with its decision, order or requirement in the premises, the matters and things of which complaint is made were fully considered by the Commission and foreclosed by its findings of fact based on substantial evidence of which the parties were advised.

Defendant alleges that the facts set forth in the reports of the Commission and each and all of the same are true and correct.

Defendant specifically denies (a) any fact or facts alleged in the petition, or any part of the same, which deny, or which seek to deny any fact or facts found by the Commission; (b) any fact or facts alleged in the petition, or any part of the same, which are inconsistent with any fact or facts found by the Commission; (c) any and all inferences of fact from any particular fact or facts alleged in the petition, or any part of the same, which seek to deny, or which are inconsistent with, any fact or facts found by the Commission; (d) any fact or facts alleged in the peti- [fol. 86] tion, or any part of the same, which set up, or which seek to set up, matters and things which were not before the Commission; (e) any fact or facts alleged in the petition, or any part of the same, which attack or which seek to attack, the action of the Commission, and to show facts other than what the Commission has found and declared; (f) any allegations in the petition, or any part of the same, which allege that facts were found by the Commission in its reports and orders which, as shown on the face thereof, were not so found; (g) any conclusions of law alleged and insisted upon in the petition, or any part of the same, which are inconsistent with any conclusions of law held by the Commission; (h) each and every allegation in the petition contained not herein specifically admitted or denied.

Wherefore, having fully answered, defendant prays that the petition be dismissed at the cost of the petitioners and for such other and further order as may be appropriate.

Blackburn Esterline, Assistant to the Solicitor General. George J. Hatfield, United States Attorney.

[fol. 87] *Duly sworn to by Blackburn Esterline. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 87-a] In United States District Court

[Title omitted]

Answer of Interstate Commerce Commission—Filed June 27, 1928, Nunc pro Tunc as of Dec. 20, 1927

The Interstate Commerce Commission, defendant in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' Petition and Bill for Injunction, hereinafter called the petition, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering Paragraph I of the petition, the Commission admits that the allegations therein contained are true.

II

Answering Paragraph II of the petition, the Commission [fol. 87-b] admits that said suit was instituted under the Constitution and laws of the United States, but denies that the suit was instituted under sections of the Code of Laws of the United States of America as stated in said paragraph, except to the extent that said sections are in harmony with the act of Congress approved October 22, 1913, 37 Statutes at Large, pages 219 and following.

III

Answering Paragraphs III, IV and V of the petition, the Commission admits that the allegations therein contained are substantially correct.

IV

Answering Paragraphs VI to XVI, inclusive, of the petition, the Commission admits and alleges that it made and entered and served upon the petitioners herein and other parties the report and order referred to in paragraph IX of the petition, in a proceeding entitled "No. 19130, California Growers' & Shippers' Protective League v. Southern Pacific Company et al.;" that thereafter said report and order were amended and modified as alleged in said paragraph IX; that on December 8, 1927, the effective date of said order of July 20 was postponed from January 10, 1928, to February 10, 1928; that said proceeding was instituted by filing in the Commission's office a complaint which contained allegations substantially as set forth in said paragraph IX, and that the petitioners were parties defendant in said proceeding.

[fol. 87-c] The Commission further alleges that said report and order of July 20, and the amendments thereto and modifications thereof above mentioned, were made, entered and served as aforesaid after the hearing referred to in said paragraph IX, in connection with the subject-matters covered by said complaint; that, prior to making, entering and serving as aforesaid said report and order of July 20, the Commission accorded to all parties to said proceeding, including the petitioners herein, a full and fair opportunity to be heard upon said subject-matters; that at said hearing a large volume of testimony and other evidence bearing upon said matters was submitted to the Commission for consideration on behalf of said parties, including the plaintiffs herein, by their respective counsel; that at said hearing and subsequently, both orally and in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination, on behalf of said parties by their respective counsel, whereupon the Commission determined said matters and made

and entered said report and order of July 20, which included the Commission's decision, conclusions, orders, and requirements in the premises, and that upon the evidence aforesaid, and as shown in and by said report and order, the Commission made the findings, stated the conclusions, and prescribed the rules and regulations, and terms and conditions upon which said order is based.

The Commission further alleges that said findings, conclusions, rules and regulations, and terms and conditions [fol. 87-d] were and are, and that each of them was and is, fully supported by the evidence submitted to the Commission in said proceeding as aforesaid, and the Commission denies each of and all the allegations to the contrary contained in the petition.

Further answering Paragraphs VI and VII of the petition, the Commission denies that the rates referred to therein for the transportation of deciduous fruits in carload lots, from points of origin in the State of California to points of destinaiton in other States of the United States east of the Rocky Mountains, either have been in the past or are now unreasonably low for such transportation.

Further answering Paragraph X of the petition, the Commission admits that the allegations therein contained concerning carload shipments transported by the petitioners in the years 1926 and 1927 are substantially correct, and alleges that the allegation that 80,000 carloads will be transported in the year 1928 is based upon speculation, and the Commission denies each of and all the other allegations contained in said paragraph X.

Further answering Paragraph XI of the petition, the Commission denies that either said order of July 20, as amended and modified as aforesaid, hereinafter referred to as the order of July 20, is, or that the new rates prescribed in and by said order are, either erroneous, or beyond the power of the Commission, or based upon a mistake of law, for the reasons, or for any of the reasons, set forth in said paragraph; denies that the order was made, and denies that [fol. 87-e] the new rates were fixed, without any determination or finding that the new rates are, or that either of them is, reasonable; denies that the new rates were not, and denies that none of said rates was, determined and

found by the Commission to be reasonable, and denies that the existing rates were not found by the Commission to be unreasonable.

Further answering Paragraph XII of the petition, the Commission alleges that the allegations therein contained are based upon interpretations of the Commission's said report and order of July 20 and of the Hoch-Smith Resolution mentioned in said paragraph, and the Commission denies the correctness of said interpretations. The Commission alleges that said resolution is a joint resolution of Congress, which was approved on January 30, 1925, and the citation of which is 43 Statutes at Large, page 801, and the Commission refers the court to the text of said resolution and to the texts of said report and order of July 20 for more full and complete information concerning their contents and the interpretation placed upon said resolution by the Commission.

Further answering Paragraph XIII of the petition, the Commission denies each of and all the allegations contained in said paragraph to the extent that they conflict with either the statements or findings of fact included in the Commission's said report of July 20 as amended as aforesaid.

[fol. 87-f] Further answering Paragraph XIV of the petition, the Commission denies that the Hoch-Smith Resolution has been construed by it as alleged in said paragraph, and denies each of and all the other allegations contained in said paragraph.

Further answering Paragraph XVI of the petition, the Commission denies that irreparable injury will ensue to the carriers referred to in said paragraph, or to any of said carriers, unless the enforcement, operation and execution of said order of July 20 is restrained and suspended during the pendency of this suit, and denies that, in the absence of such restraint and suspension, either said carriers or any of them will suffer loss in the amounts mentioned in said paragraph, or in any other amount.

The Commission further alleges that, in making said order of July 20, it considered and weighted carefully, in the light of its own knowledge and experience, every fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding, by their respective counsel, including all matters covered by the allegations of the petition herein.

The Commission further alleges that said order of July 20 was not made and entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable man-[fol. 87-g] ner; and the Commission denies each of and all the allegations to the contrary contained in the petition.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition, in so far as they conflict either with the allegations herein or with either the statements or conclusions of fact included in said report and order of July 20, as amended as aforesaid, which are hereby referred to and made a part of this answer.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that the Petition and Bill for Injunction herein be dismissed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. P. J. Farrell, of Counsel.

Duly sworn to by Clyde B. Aitchison. Jurat omitted in printing.

[fol. 87-h] [File endorsement omitted.]

[fol. 88] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE, INTERVENER, TO PETITION AND BILL FOR INJUNCTION—Filed Dec. 20, 1927

Now comes the California Growers' and Shippers' Protective League, and having first obtained the order of the above entitled court in the above entitled cause permitting it to intervene in said cause as a party defendant thereto with like effect as if it had been originally named as a party

defendant to said action, and answering the petition and bill for injunction herein (hereinafter referred to as the "complaint"), denies, admits and alleges as follows, to wit:

I

That the California Growers' and Shippers' Protective League, intervener, (hereinafter styled the "intervener") is a voluntary, non-profit association organized and existing under the laws of the State of California, having its principal office in the City and County of San Francisco, California; that intervener's membership comprises grow-
[fol. 89] ers of deciduous fruits in the State of California and shippers of such deciduous fruits from points in the State of California to points without said state, and associations of such growers and shippers; that, at the times when the intervener filed with the Interstate Commerce Commission the complaints referred to in Paragraphs VIII and IX of the complaint herein, intervener's membership included representatives of approximately 18,000 growers of deciduous fruits in the State of California, the volume of whose product amounted to substantially 85% of the entire production of deciduous tree fruits and 65% of the entire production of grapes in the State of California; that intervener's members are now, and at all times hereinafter mentioned have been, largely engaged in the shipment of deciduous fruits by railroad from points in the State of California to points in other states of the United States, in the District of Columbia, and in the Dominion of Canada, including the points referred to as "eastern points" in Paragraph V of the complaint herein.

That the intervener is the same California Growers' and Shippers' Protective League specified in Paragraph III and in other paragraphs of the complaint herein, and is the party upon whose petition the order of the Interstate Commerce Commission made on July 20, 1927, and referred to in said complaint, was made.

II

Answering Paragraph VI of the complaint herein, the intervener denies that the said carriers for more than fifteen years last past or for any other period have fostered or encouraged the growth of the deciduous fruit industry

in California by establishing or maintaining rates for the [fol. 90] transportation of said fruit in carload lots from California to eastern points, or any thereof, which rates have been less than reasonable rates for such carriage, and denies that any rate so established and maintained by the carriers has been less than reasonable; in this behalf intervener shows that for many years continuously, prior to June 25, 1918, the rate established and maintained for the transportation of deciduous fruits in carload lots from California to points in transcontinental groups "A" to "J" inclusive was $1.15 per hundred pounds; that on said 25th day of June, 1918, said rate was increased by 25% thereof, or to $1.44 per hundred pounds, and that said rate of $1.44 per hundred pounds was continuously maintained between the said 25th day of June, 1918, and the 25th day of August, 1920, both inclusive; that upon the 26th day of August, 1920, the rate from California to points in transcontinental groups "A" to "H" inclusive was increased by 33⅓% thereof, or to $1.92 per hundred pounds, and the rate to points in transcontinental group "J" was increased by 25% thereof, or to $1.80 per hundred pounds; that the said rates of $1.92 per hundred pounds and $1.80 per hundred pounds were continuously maintained in effect throughout the period extending from August 26, 1920, to December 31, 1921, both inclusive; that upon the first day of January, 1922, the said rate of $1.92 per hundred pounds to points in transcontinental groups "A" to "H" inclusive was reduced by 10% thereof, or to $1.73 per hundred pounds, and the said rate of $1.80 to points in transcontinental group "J" was reduced by 10% thereof, or to $1.62 per hundred pounds; that said rates of $1.73 per hundred pounds and $1.62 per hundred pounds have been continuously maintained from and including the said first day of January, 1922, to the date [fol. 91] hereof, and that the same are still in effect. The intervener alleges that the said rates as established on the said 26th day of August, 1920, and thereafter maintained continuously to and including the 31st day of December, 1921, and that the said rates as established upon the first day of January, 1922, and thereafter maintained, were, and each thereof was, unjust and unreasonable and imposed an undue burden upon carload shipments of fruit from California to the several destinations to which such

rates were applicable. The intervener further shows that the said rate of $1.72 per hundred pounds now in effect to points in groups "A" to "H" inclusive exceeds the rate in effect to such points prior to June 25, 1918, by approximately 50.4%, and that the said rate of $1.62 per hundred pounds now in effect to points in group "J" exceeds the rate in effect to such points prior to June 25, 1918, by approximately 40.8%; the intervener alleges that such rates now in effect are, and each thereof is, unjust and unreasonable, and that the same impose an undue burden upon such shipments of fruit.

The intervener denies that the said rates which have been maintained from and since the said 26th day of August, 1920, and from and since the said first day of January, 1922, have, or that any thereof, has promoted or maintained a free movement of said fruits or any thereof, and denies that such rates have, or that any thereof has contributed largely or at all to the increase in the quantities of such fruits which have been transported by rail to said eastern points; the intervener shows that the increases in the quantities of such fruits which have been transported by rail to eastern points during the period specified in Paragraph [fol. 92] VI of the complaint herein were responsive to changes in economic conditions and to other circumstances entirely unrelated to the measure of transportation charges, and that such increases have taken place notwithstanding the excessive and burdensome transportation charges imposed upon such shipments of fruits by such rates; in this behalf the intervener alleges that, as shown by uncontradicted evidence introduced before the Interstate Commerce Commission at the hearing of the intervener's complaint upon which the Commission's order of July 20, 1927, was made, such rates have for several years last past, and particularly throughout the years 1924, 1925 and 1926, been so burdensome as to prevent the free movement of said fruits and greatly to limit and curtail the movement of said fruits from California to eastern points, and that, except for the maintenance of said unjust and unreasonable rates, a materially greater volume of fruits would have been moved from California to such eastern points,

III

Answering Paragraph VII of the complaint herein, intervener denies that the rates specified in said paragraph were a voluntary reduction from higher rates theretofore in effect. In this behalf the intervener alleges that the said rate of $1.73 per hundred pounds to points in transcontinental groups "A" to "M," excluding "J", and the said rate of $1.62 per hundred pounds to points in transcontinental group "J," were established on the first day of January, 1922 and maintained for a period of six months thereafter, in pursuance of findings and recommendations of the Interstate Commerce Commission, and that the con-
[fol. 93] tinued maintenance of said rates from and after the 30th day of June, 1922, was in pursuance of the requirements of a decision of the said Interstate Commerce Commission.

The intervener denies that the said rates now in effect are, or that either thereof is, non-discriminatory or non-prejudicial; denies that said rates permit or facilitate, or that either thereof permits or facilitates, the free movement of deciduous fruits; denies that said rates are not now or never since their effective date have been, or that either thereof is not now or never since its effective date has been, fully compensatory to the carriers or any of them, or to each and singular of said carriers; denies that such rates are, or ever have been, or that either of them is or ever has been, less than fully compensatory to said carriers, and each and every thereof; denies that said rates were or are maintained, or that either thereof ever was or is maintained, by said carriers or any of them upon a basis less than reasonable, or less than fully compensatory to the carriers or any of them, either to encourage or foster the free movement of deciduous fruits, or otherwise.

IV

Answering Paragraph VIII of the complaint herein, the intervener shows that said report and order of the Interstate Commerce Commission in said paragraph referred to were made by a division of said Commission; that it was found in and by the report made by such division upon the 25th day of June, 1925, that the record in said cause did

not show the comparative levels in market value of the various commodities over a reasonable period of years, and that such record did not justify the conclusion that the un- [fol. 94] favorable financial return to the California fruit producers was likely to continue; that it was shown by uncontradicted evidence introduced before the Commission at the hearing of the intervener's complaint upon which the Commission's order of July 20, 1927, was made, that the recession in the market prices for California deciduous fruit and the consequent economic depression in the California deciduous fruit industry had continued practically unabated since the year 1922; that it was shown by such uncontradicted evidence, and found by the Commission, that the California deciduous fruit industry for the period of five years then past had been undergoing a period of deflation and depression, and that the years 1925 and 1926 were more unfavorable than the years preceding; that said findings are set forth in the report made by the full Commission on the said 20th day of July, 1927, that they are fully sustained by the evidence of record, and that no other or different findings could properly have been made in the premises.

V

Answering Paragraph X of the complaint herein, the intervener denies that the order of the Interstate Commerce Commission in said paragraph referred to is void in any respect whatsoever or particularly in that it takes from the carriers, and each or any of them, their, or any of their, private property for a public use without just compensation, or deprives the carriers, or each or any of them, of their, or any of their, property without due process of law, or otherwise or at all, in violation of the Fifth Amendment, to the Constitution of the United States, or in violation of any provision of the Constitution of the United States, [fol. 95] or otherwise or at all; denies that said order takes from said carriers, or each or any of them, their, or any of their, property for public use or otherwise, without just compensation or otherwise, or deprives the carriers, or each or any of them, of their, or any of their, property without due process of law, or otherwise, in violation of the Fifth Amendment to the Constitution of the United States, or in violation of any provision of the Constitution of the United

States, or otherwise, or at all; intervener denies that the said new rates would produce an average revenue to the carriers not to exceed $467.07 per car, using the highest rates prescribed in the said order, and allowing for the increased minimum weight on grapes permitted thereby, and denies that said new rates would produce an average income to said carriers of less than $480 per car, using the highest rates prescribed in said order and allowing for the increased minimum weight on grapes permitted thereby, and in this behalf intervener alleges that said new rates will produce an average revenue, using the highest rates prescribed in the said order and allowing for the increased minimum weight on grapes permitted thereby, to the carriers approximating $480 per car; intervener denies that the average cost incurred by the carriers in performing such service is not less than $470.06 per car, that is to say, denies that such average cost is $470.06, or more, and denies that such cost is in any amount in excess of an amount substantially less than $470.06, without allowing for any profit, and in this behalf alleges that such average cost is substantially less than $470.06 per car; intervener denies [fol. 96] that the carriers, or any of them, will suffer a loss of not less than $2.99 on each car transported under the new rates, without allowing for any profit; denies that said carriers, or any of them, will suffer any loss whatsoever on any car transported under the new rates, and in this behalf alleges that the carriers will realize a substantial profit from the transportation of fruit under such new rates. The intervener denies that the aggregate loss to the carriers under the new rates will exceed $240,000 per year, and denies that any loss whatever will be sustained by the carriers under such new rates.

VI

Answering Paragraph XI of the complaint herein, intervener denies that the said order and/or the new rates, or either or any thereof, are based upon a mistake of law, or that the same are erroneous or beyond the power of the Commission, and denies that the order was made or the new rates fixed without any determination or finding that the new rates, or either of them, are reasonable; in this behalf intervener alleges that said order expressly refers to

and includes the said report of the Commission, and that the Commission found in and by its said report that the present rates are too high and that they are and for the future will be unreasonable to the extent that they exceed or will exceed the rates required by the Commission to be established for the future. Intervener denies that the word "unreasonable" as used in said report of the Commission does not refer to the test of reasonableness prescribed by law or by Section 1 of the Interstate Commerce Act; denies that it refers instead to the mistaken or erroneous or [fol. 97] any belief of the Commission that the said Hoch-Smith Resolution creates a new or different or any standard of reasonableness, depending not upon the cost or value of the particular service but rather upon the existence of a depression in the business of particular shippers, the inability of said shippers to realize a profit from their shipments, and upon the relatively prosperous condition of the carriers' finances; denies that said word "unreasonable" refers to any test of reasonableness other than the test of reasonableness prescribed by law and by Section 1 of the Interstate Commerce Act; denies that it refers to any belief whatsoever upon the part of the Commission, except a belief that said word is to be interpreted by the test prescribed by law and by Section 1 of the Interstate Commerce Act; denies that said Commission ever entertained a belief, or in making said order was governed or influenced by such belief, that the Hoch-Smith resolution creates a new or different or any standard of reasonableness different from the standard prescribed by law and by Section 1 of the Interstate Commerce Act, depending upon the considerations mentioned in Paragraph IX of said complaint, or any of them, or depending upon any considerations whatsoever, other than the consideration that such term was governed and controlled by the provisions of law and particularly Section 1 of the Interstate Commerce Act. In this behalf the intervener alleges that the said word "unreasonable" as used in the Commission's report refers expressly to the test of reasonableness prescribed by law and by Section 1 of the Interstate Commerce Act, and that the Commission concluded, in and by its said report, that the said Hoch-[fol. 98] Smith Resolution sets no new standard of lawfulness, but provides, in effect, that to the extent that there

are flexible limits to the Commission's discretion, it should require the maintenance of the lowest rates falling within such limits. Intervener denies that no determination or finding upon the actual reasonableness of the new rates, or either thereof, was made by the Commission, and denies that the existing rates are not found to be unreasonable; in this behalf the intervener alleges that the existing rates were expressly found by the Commission to be unreasonable, that the Commission expressly found that the new rates and both thereof were reasonable for future maintenance, and that such findings are fully sustained by the evidence before the Commission in said cause.

VII

Answering Paragraph XII of the complaint herein, the intervener denies that the order and/or the new rates, or either or any thereof, are not supported by the findings or are based upon a mistake of law, and denies that the Commission did not find that the present rates were unreasonable; intervener denies that the Commission found in or by said report, in effect or otherwise, that all or any of the present rates are reasonable; denies that said Commission based the new rates, or any thereof, upon the grounds that the new rates were necessary to promote the freedom of movement by the carriers of deciduous fruit in interstate commerce and were compatible with the maintenance of adequate transportation service, excepting, however, that the Commission found that such new rates are and will be reasonable, that their establishment is necessary to per-
[fol. 99] mit the freedom of movement by the carriers of deciduous fruit in interstate commerce, and that they are compatible with the maintenance of adequate transportation service. Intervener denies that the Commission erroneously construed the said Hoch-Smith Resolution, and denies that the Commission found that said Resolution empowered or directed it to base rates for the transportation of a particular commodity in interstate commerce upon the condition of the particular industry concerned therein or without regard to the relative conditions prevailing in the several industries of the country. Intervener denies that the Commission found that the Resolution empowered or

directed it to base rates for the transportation of a particular commodity upon the general condition of the particular carrier's business or without regard to the costs of service to said carrier or any profit to be earned by the carrier in transporting such commodity. Intervener denies that the Commission found that said Resolution authorized or directed it to prescribe rates for the transportation of the products of an industry in a depressed financial condition at a level below that which would return a reasonable or any profit whatsoever to the carriers. Intervener denies that the Commission found that said Resolution required it to fix rates for the transportation of commodities at a level which would permit the shipper to continue his business at a profit even though the carrier should not be accorded a reasonable profit by said rate. Intervener denies that the Commission found that the Resolution required it to fix rates [illegible] roducts of agricultural pursuits in a depressed condition relatively lower than the rates fixed for similar products of other pursuits in a prosperous condition. Intervenor denies that said Commission erroneously, [fol. 100] or otherwise, or at all, found that the resolution authorized, or authorizes, it, to make any alteration or alterations in any rate or rates for the transportation of any particular commodity or commodities without consideration and rearrangement, or consideration or rearrangement, of the general rate structure of the carriers, or of the country, and the rates for transportation of other commodities, excepting that the Commission did find that it possessed and possesses the power, and was and is required to fix rates for products of agricultural pursuits in accordance with the established principles of rate making after, as well as before, the passage and approval of said resolution and without awaiting the conclusion of the general investigation which it is directed by the resolution to make, and that the resolution was and is in effect a direction to it, the said Commission, to give agricultural commodities affected by depression the lowest rates that it is possible to give them without running counter to the provisions of the Interstate Commerce Act and the carriers' rights under the Constitution. Intervener admits that said resolution directs only the making by the Commission of reasonable and lawful changes in the rate structure of the country and

that it does not direct or authorize the Commission to fix any rate unreasonable or confiscatory to the carriers, or any of them. Intervener denies that said resolution has no application whatever to said hearing or said order or rates. Said intervener admits that said resolution directs said Commission to make an investigation of the general rate structure of the country, but denies that said resolution does not authorize or direct the Commission to make any alteration in the present rates independent of, or with- [fol. 101] out relation to, or before the completion of, said investigation. Intervener denies that said resolution does not authorize or direct the Commission to make any alteration of the present rates independent of, or without relation to, the general rate structure of the country, but intervener alleges in this behalf that nothing in said resolution contained operates to deprive the Commission of its power and duty to make alterations in the present rates within the limits of its discretion in accordance with established rate-making principles and subject to the provisions of the Interstate Commerce Act and the carriers' rights under the Constitution.

VIII

Answering Paragraph XIII of the complaint herein, the intervener denies that the Commission fixed each or either of the new rates arbitrarily, or contrary to the evidence, or without any evidence to support it.

The intervener denies that the finding of the Commission that the existing rates or any rates higher than the new rates are unreasonable, is, as to each or either of the new rates, contrary to the evidence. Intervener denies that it appears from the evidence without contradiction, or that it appears from the evidence at all, or that it is the fact, that the new rates will not yield to the carriers the cost of transportation of the commodities covered thereby; denies that it appears without contradiction from the evidence adduced, or that it appears from the evidence adduced at all, or that it is the fact, that the average cost of transportation of each carload of deciduous fruit from California to eastern points is or will be not less than $433.68, exclusive of [fol. 102] taxes and rentals of joint facilities necessary for such service; denies that it appears without contradiction

from the evidence adduced, or that it appears from the evidenced adduced at all, or that it is the fact, that the total average operating expenses and taxes for each carload of deciduous fruit transported from California to eastern points is or will be not less than $470.06; denies that it appears from the uncontradicted evidence adduced, or that it appears from the evidence adduced at all, or that it is the fact, that the total revenue per car which will be derived by the carriers under the rates specified in the order will not exceed an average of $476.07 per car; denies that it appears from the uncontradicted evidence adduced, or that it appears from the evidence adduced at all, or that it is the fact that if the new rates or either of them are in force the carriers will sustain a loss of not less than $2.99 per carload, i. e., $2.99 or more per carload, or any loss whatsoever, for each and every carload of deciduous fruits shipped from California to eastern points.

The intervener denies that the finding of the Commission that there was an existing depression in the whole of the deciduous fruit industry is, as to either of the new rates, contrary to the evidence or contrary to the special findings of the Commission; denies that it appears from the evidence without contradiction, or otherwise or at all, or that it was found by the Commission, that there is or has been no depression in the business of producing peaches, apricots or cherries.

The intervener denies that the finding of the Commission that a reduction in the present existing rates of the car- [fol. 103] riers was and is necessary to permit the freedom of movement by the carriers of deciduous fruits in interstate commerce is, as to either of the new rates, contrary to the evidence or contrary to the special findings of the Commission, or any of them; denies that it appears from the evidence without contradiction or otherwise, or that it is the fact that any or all of said deciduous fruits are or have been moving freely in interstate commerce; denies that the freedom of movement of such fruits in interstate commerce has rapidly, or otherwise, increased between 1917 and 1926.

The intervener denies that the finding of the Commission that the new rates were and are compatible with the maintenance of adequate transportation service is, as to the new

rates or either thereof, contrary to the evidence; denies that it appears from the evidence without contradiction, or otherwise, that the new rates, or either of them, are less than the lowest possible lawful rates compatible with the maintenance of adequate transportation service, or that the revenue which will be derived under the said rates prescribed in said order will be insufficient to repay to the carriers the cost of transportation of said fruits or insufficient to pay to the carriers a reasonable or any profit thereon, or that such revenue will be insufficient to repay said carriers, or any or all of them, the cost of transportation of said fruits, and in addition thereto, a reasonable profit thereon.

The intervener denies that the finding of the Commission that the new rates were required by a due regard to the general and comparative levels in market value of the various classes and kinds of commodities, as indicated over [fol. 104] a reasonable period of years, is contrary to the evidence; denies that the period from the year 1917 to the year 1926 did not or does not constitute a "reasonable period of years" within the meaning of said Hoch-Smith Resolution; denies that it is or was a fact, or that it was found by the Commission that said period of years was or is merely a single period of steady decline in price levels of deciduous fruits from the wartime peak of prices in 1917; denies that no evidence was introduced as to the general or comparative levels in market value of deciduous fruits and of the other various classes and kinds of commodities, or that any less than full and complete evidence as to the same was introduced.

The intervener denies that there was no evidence whatever to support the statement in the report on further consideration, or as alleged in the complaint the "assumption stated in the report on further consideration," that the increased minimum load provided by the order would make some increase in the average revenue per car; in this behalf the intervener alleges that the evidence adduced before the Commission shows without contradiction that the average loading of carload shipments of grapes from California to eastern points in the year 1926 was 28,840 pounds per car, and that the authorized increase in the carload minimum weight applicable to shipments of grapes from 26,000

pounds to 30,000 pounds will be followed by an increase in the average load of grapes to an amount somewhat in excess of 30,000 pounds per car, and that such increase in the loading will necessarily substantially increase the average revenue per car.

IX

Answering Paragraph XIV of the complaint herein, the [fol. 105] intervener denies that the order is based upon a mistake of law or that it is erroneous or beyond the power of the Commission in any respect or respects whatsoever, or in particular that there is no warrant or authority for the fixing of the new rates excepting only said Hoch-Smith Resolution and/or in particular that said Hoch-Smith Resolution violates the provisions of Amendment Five of the Constitution of the United States, or is unconstitutional or void; denies further that there is no warrant or authority in law for the fixing of the new rates, excepting only said Hoch-Smith Resolution; denies that said resolution violates the provisions, or any provision, of Amendment Five of said Constitution, or any provision of said Constitution, or that said resolution, or any part thereof, is unconstitutional or void.

Denies that the order is based upon a mistake of law or is erroneous or beyond the power of the Commission in any respect or respects whatsoever, or in particular in that it is based upon the construction of the Hoch-Smith Resolution by the Commission, as permitting and requiring, or permitting or requiring, the fixing of rates which are confiscatory and/or less than reasonable, and/or in the respect that as so construed by the Commission, or otherwise, or at all, said Hoch-Smith Resolution violates the provisions of Amendment Five to the Constitution of the United States and/or is unconstitutional and void; denies that the Commission in or by said order, or otherwise or at all, construed said Hoch-Smith Resolution as permitting or requiring the fixing of rates which are confiscatory and less than reasonable or confiscatory or less than reasonable; denies that as so construed by the Commission, or as con- [fol. 106] strued in any way by the Commission or otherwise, or at all, said Hoch-Smith Resolution violates the provisions, or any provision of Amendment Five to the

Constitution of the United States, or any provision of the Constitution of the United States, or is unconstitutional or void for any reason whatsoever or at all.

Denies that the order is based upon a mistake of law or is erroneous or beyond the power of the Commission in any respect or respects whatsoever or at all, and in particular that it is based upon the construction by the Commission of said Hoch-Smith Resolution as permitting and requiring or permitting or requiring the fixing of rates not according to any standard of reasonableness or upon the cost or value of the service rendered by the carrier but upon the existence of a depression in the business of particular shippers, the inability of such shippers to realize a profit from their shipments, and upon the relatively prosperous condition of the carriers' finances; denies that said Commission by said order or otherwise or at all construed, or has construed, said Hoch-Smith Resolution as permitting and requiring or permitting or requiring the fixing of rates not according to any standard of reasonableness, nor upon the cost or value of the service rendered by the carrier, but upon the existence of a depression in the business of particular shippers, the inability of such shippers to realize a profit from their shipments, and upon the relatively prosperous condition of the carriers' finances; denies that said Commission by its order, or otherwise or at all, construed said Hoch-Smith Resolution, either as permitting and requiring or permitting [fol. 107] or requiring the fixing of rates not according to any standard of reasonableness; denies that said Commission in or by said order, or otherwise or at all, construed or has construed said Hoch-Smith Resolution in any manner other than as requiring the fixing of said rates as prescribed by law and particularly by Section 1 of the Interstate Commerce Act, and with due regard to the constitutional rights of said carriers, and each of them; denies that as construed by said Commission in and by said order said Hoch-Smith Resolution violates the provisions, or any of the provisions, of Amendment Five of the Constitution of the United States, or any provision or provisions of said Constitution, or is unconstitutional or void in any particular.

X

Answering Paragraph XV of the complaint herein, intervener denies that said deciduous fruits, or any of them, have moved freely in interstate commerce during the year 1927; intervener alleges that intervener is without sufficient information or belief to enable it to answer the allegations in said Paragraph XV of said complaint contained to the effect that during the year 1927 the carriers of the country as a whole have suffered a loss in their gross and net revenues and that their financial condition is relatively less prosperous than it was during the year 1926, and, placing its denial upon that ground, denies said allegations and each and every thereof.

XI

Answering Paragraph XVI of the complaint, intervener denies that unless the enforcement, operation and execution of said order is restrained and suspended during the pendency of these proceedings, irreparable injury, or any [fol. 108] irreparable injury, will ensue to the carriers, or any of them, for the reasons specified in Paragraph XVI of the complaint, or for any reasons whatsoever, or at all; in this behalf, intervener alleges that all, or substantially all, of the 1927 fruit crop which will move from California to points in said Groups "A" to "M," inclusive, has already moved and that the 1928 fruit crop will not commence to move until May or June of 1928. Intervener further alleges that the cost of publication, filing and posting of tariffs referred to in said Paragraph XVI of said complaint is inconsequential; intervener further alleges that if the power of this Honorable Court be exercised to restrain the enforcement, operation and execution of said order, the effect thereof will be further to depress conditions in said deciduous fruit industry in California, and that the injury to said industry and to intervener and to intervener's members will be incomparably more burdensome than the slight effect which would be occasioned to said carriers by publishing said tariffs; that it will be possible for this court to hear and determine this proceeding upon the merits long before the commencement of the movement of said 1928 crop of

California deciduous fruit to points in said groups "A" to "M," inclusive.

Wherefore intervener prays that petitioners take nothing by their said complaint and that intervener have judgment for its costs of suit herein incurred.

California Growers' and Shippers' Protective League, by Frank H. Buck, President, Intervener. McCutchen, Olney, Mannon & Greene, Allan P. Matthew, Attorneys for said Intervener.

[fol. 109] *Duly sworn to by Frank H. Buck. Jurat omitted in printing.*

Service of the within answer and receipt of a copy admitted this 20th day of December, 1927.

Herman Phleger, Maurice E. Harrison, Platt Kent, James S. Moore, Jr., James E. Lyons, Attorneys for Petitioners. J. Stanley Payne, Attorney for Commission. Blackburn Esterline, for U. S. A.

[File endorsement omitted.]

[fol. 110] IN UNITED STATES DISTRICT COURT

[Title omitted]

Before Rudkin, Circuit Judge; Kerrigan and St. Sure, District Judges

MEMORANDUM OPINION—Filed Jan. 18, 1928

The Interstate Commerce Commission reduced the rate on transcontinental shipments of deciduous fruits from California to certain eastern points from $1.73 to $1.60, and to certain other eastern points from $1.62 to $1.50 per one hundred pounds. The present suit was instituted by the large number of railroads affected by the reduction to set aside the order of the Commission and to suspend its operation during the pendency of the suit. The application for a temporary injunction is based largely on the testimony taken before the Commission and on the report made

by the Commission. We have given careful consideration to the record and to the exhaustive arguments submitted on the application for the temporary injunction, and will content ourselves at this time with a mere statement of our conclusions. First, the contention that the reduced [fol. 111] rate will compel the carriers to transport this class of freight at a loss, or without substantial reward, is without support in the record. Second, the contention that the carriers are entitled to receive what would be deemed a fair return on this class of freight, independently of their other business, and independently of any other consideration, is unfounded in law. "The legislature, undoubtedly, has a wide range of discretion in the exercise of the power to prescribe reasonable charges and it is not bound to fix uniform rates for all commodities or to secure the same percentage of profit on every sort of business. There are many factors to be considered,—differences in the articles transported, the care required, the risk assumed, the value of the service, and it is obviously important that there should be reasonable adjustments and classifications. Nor is its authority hampered by the necessity of establishing such minute distinctions that the effective exercise of the rate-making power becomes impossible. It is not bound to prescribe separte rates for every individual service performed, but it may group services by fixing rates for classes of traffic. As repeatedly observed, we do not sit as a revisory board to substitute our judgment for that of the legislature, or its administrative agent, as to matters wtihin its province. * * * The court, therefore, is not called upon to concern itself with mere details of a schedule; or review a particular tariff or schedule which yields substantial compensation for the services it embraces, when the profitableness of the intrastate business as a whole is not involved." Nor. Pac. Ry. v. North Dakota, 236 U. S. 585-98. Third, the Commission was authorized to reduce rates on the products of agriculture before completing the thor- [fol. 112] ough investigation of the rate structure of common carriers, subject to the Interstate Commerce Act, as directed by the joint resolution of January 30, 1925, 43 Stat. 801, and did not otherwise misconstrue the terms of that resolution which are in a large measure directory.

The application for a temporary injunction is therefore denied.

[File endorsement omitted.]

[fol. 113] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING APPLICATION FOR TEMPORARY INJUNCTION—Jan. 18, 1928

The application for a temporary injunction heretofore heard and submitted being now fully considered and the Court having filed its Memorandum Opinion thereon, it is in accordance with said Memorandum Opinion ordered that said application for a temporary injunction be and the same is hereby denied.

[fol. 114] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO SHOW CAUSE—Filed Feb. 16, 1928

The petitioners in the above entitled suit having presented an application for an order suspending and restraining the enforcement, operation and execution of the order of the Interstate Commerce Commission hereinafter described pending appeal; now, therefore,

It is hereby ordered that said defendants United States of America and Interstate Commerce Commission, and said Intervenor, California Growers & Shippers' Protective League, be and appear before this Court, at its courtroom in the Post Office Building, in the City and County of San Francisco, State of California, on Thursday, the 23rd day of February, A. D. 1928, at two o'clock in the afternoon of that day, then and there to show cause, if any they have, why this Court should not issue its order suspending and [fol. 115] restraining, during the pendency of the appeal of said petitioners from the order of this court made Jan-

uary 18, 1928, (which order denied their application for an interlocutory injunction herein, the enforcement, operation and execution of that certain order of the Interstate Commerce Commission made on July 20, 1927, as amended by supplementary orders of said Commission made on September 19, 1927, October 14, 1927, November 14, 1927, and November 22, 1927, all in that certain proceeding then pending before said Interstate Commerce Commission entitled "Docket No. 19130, California Growers' & Shippers' Protective League, Complainants, vs. The Atchison, Topeka and Santa Fe Railway Company, et al., Defendants";

And it is hereby further ordered that notice of the hearing of such application for said interlocutory injunction suspending and restraining the enforcement, operation and execution of said order of said Interstate Commerce Commission be given by service upon the Interstate Commerce Commission, and upon the Attorney General of the United States, of a copy of this order, at least three (3) days before the return date of this order, by delivering a copy thereof to the United States District Attorney for the Northern District of California and upon the intervenor California Growers' & Shippers' Protective League, by service upon its attorney of a copy of this order, at least three (3) days before the said return date of this order.

Dated February 16th, 1928.

A. F. St. Sure, United States District Judge. Frank H. Rudkin, United States Circuit Judge. Frank H. Kerrigan, United States District Judge.

[File endorsement omitted.]

[fol. 116] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING APPLICATION OF PETITIONERS FOR STAY OF ORDER OF INTERSTATE COMMERCE COMMISSION PENDING APPEAL, ETC.—Feb. 23, 1928.

Plaintiffs' application for an order staying the order of the Interstate Commerce Commission came on to be heard

and after argument it is ordered said application be and the same is hereby denied.

[fol. 117] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF H. GIDDINGS—Filed May 1, 1928

STATE OF CALIFORNIA,
Northern District,
City and County of San Francisco, ss:

H. Giddings, being duly sworn, deposes and says:

That he has read the petition herein and knows the contents thereof.

That he is now, and for more than three years last past has been, an official, to-wit, Vice-President and General Manager, and for more than twenty years last past has been in the employ of, Pacific Fruit Express Company, a corporation organized under the laws of the State of Utah, and engaged in the business of supplying refrigerator cars and refrigeration service in connection therewith to railroad companies with whom it has a contract or agreement for such service, and to their short line connections. That at the present time said Pacific Fruit Express Company has, and for several years last past had, contracts to furnish refrigerator cars and refrigeration service in connection therewith to the following named petitioners in the above-entitled action, serving the State of California, viz: Los Angeles & Salt Lake Railroad Company, The Western Pacific Railroad Company, Southern Pacific Company.

That these are and were all of the transcontinental rail-
[fol. 118] roads directly serving the State of California, except The Atchison, Topeka & Santa Fe Railway Company, which furnishes its own refrigerator cars and refrigeration service. That information respecting the number of carload shipments of fresh deciduous fruits, other than apples, from points on the lines of above-mentioned railroads in the State of California and their short line connections served by the Pacific Fruit Express Company and

by The Atchison, Topeka & Santa Fe Railway Company and their short line connections, is exchanged by The Atchison, Topeka & Santa Fe Railway Company and the Pacific Fruit Express Company; and that affiant is informed thereby of the total number of carload shipments of fresh deciduous fruits, other than apples, originating at points on all railroads in the State of California and moving to interstate destinations for many years last past.

That at all of the times mentioned herein, affiant was actively connected with the transportation of fresh deciduous fruits from the State of California to eastern trans-continental points and during said times he secured additional information as to the deciduous fruit industry of California by study of the various Federal, state and other records, documents and publications, relating thereto and affiant has maintained close contact with associations, shippers, growers and other persons engaged in the deciduous fruit business in California to the end that he might be fully informed as to the production and probable number of carload shipments of deciduous fruits to be offered for transportation from California to eastern transcontinental points.

That the total number of carload shipments of fresh deciduous fruits, other than apples, originating at points on all railroads in the State of California and moving to interstate destinations in 1927 was 89,835 carloads, of which 72,330 carloads consisted of fresh grapes. That the average number of carloads shipped from California to interstate points in the years 1925, 1926 and 1927, 84,267 carloads. [fol. 119] That to the best of affiant's knowledge and belief, approximately ninety-five (95) per cent of said movement was to the destinations referred to in the petition herein as "Eastern points."

The carload number of fresh deciduous fruits, other than apples, from points of origin in the State of California to interstate destinations during the period, May 1st, to and including December 31st of the years indicated below, was as follows:

1926	77,269 carloads
1927	89,749 carloads

approximately ninety-five (95) per cent of which moved to said eastern points.

That based upon the experience of previous years and taking into consideration the rapid increase in number of bearing trees and vines of fresh deciduous fruits in California, the recent rapid growth of carload shipments to said eastern points and the lack of available markets therefor in California, it is affiant's opinion and belief that during the period May 1st, 1928, to and including December 31st, 1928, not less than approximately 97,786 carloads of fresh deciduous fruits, other than apples, will move from points in the State of California, to said eastern points, divided approximately as follows:

May	155 carloads
June	2,252 carloads
July	6,401 carloads
August	16,866 carloads
September	31,975 carloads
October	34,010 carloads
November	5,563 carloads
December	564 carloads
Total	97,786

[fol. 120] That affiant believes and therefore states that an equal or greater number will move during the same period in each year thereafter.

H. Giddings.

Subscribed and sworn to before me this 30th day of April, 1928. Frank Harvey, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

[File endorsement omitted.]

[fol. 121] In United States District Court

[Title omitted]

Before Rudkin, Circuit Judge; Kerrigan, and St. Sure, District Judges

Memorandum by the Court—Filed May 3, 1928

This case has been submitted to us on final hearing upon the record before us on the hearing of the application

for a temporary injunction. On the first hearing we disposed of the application rather summarily, stating our conclusions in general terms, expecting at that time to review the testimony at greater length on the final hearing and to make more specific findings on the material issues in the case, or to accomplish the same result through a reference to a Special Master. But the desire of the plaintiffs to apply to the Supreme Court during its present term for a stay pending the appeal, in the event that such a stay is refused by this Court, precludes us from carrying out our original design. However, we are informed that the parties have condensed the record before us on the former hearing so as to bring it within reasonable limits and there is not the same necessity for specific findings that might otherwise exist. To the end, therefore, that the plaintiffs may make timely application to the Supreme Court for the stay of proceedings as requested by them, we content [fol. 122] ourselves with dismissing the bill of complaint for the reasons stated in our former opinion, and the application for a stay of proceedings pending the appeal is denied. Let a decree be entered accordingly.

[File endorsement omitted.]

[fol. 123] IN UNITED STATES DISTRICT COURT

In Equity. No. 1987

THE ANN ARBOR RAILROAD COMPANY, THE ATCHISON, TOPEKA & Santa Fe Railway Company, The Baltimore & Ohio Railroad Company, and Forty-five (45) Other Railroad Companies and the Receivers of Certain Thereof, Petitioners,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE Commission, Defendants (California Growers' and Shippers' Protective League, Intervenor)

Before the Honorable Frank H. Rudkin, United States Circuit Judge, and the Honorable A. F. St. Srue and the Honorable Frank H. Kerrigan, United States District Judges, Holding the Specially Constituted District Court Pursuant to Urgent Deficiencies Act of October 22, 1913 (38 Stat. 219)

FINAL DECREE—Filed May 9, 1928

This cause came on for hearing on the application and rule to show cause of the petitioners for a temporary or preliminary injunction and was argued by counsel and submitted to the Court; and thereupon, upon consideration thereof, in accordance with the memorandum opinion of the Court duly filed, it was ordered, adjudged, and decreed that the application be and the same was denied.

And thereupon this cause came on for final hearing at [fol. 124] this term on the pleadings and the transcript of the evidence and proceedings before the Interstate Commerce Commission as certified by the Secretary thereof and on other documentary evidence consisting of orders and decisions of the Interstate Commerce Commission, introduced in evidence and marked Plaintiff's Exhibits 2, 3, 4 and 5 respectively, on said final hearing.

The cause was thereupon submitted to the court for decision and determination upon the merits; and thereupon, upon consideration thereof,

It is hereby ordered, adjudged, and decreed that the prayer of the petition and bill for injunction be and the same is hereby denied and that the petition and bill for injunction be and the same is hereby dismissed for want of equity, and that the defendants and intervenor recover from said petitioners their costs of suit herein incurred;

And whereas petitioners have advised the court that they intend to appeal to the Supreme Court of the United States from this order, judgment and decree, and have applied to this court for a stay of that certain order of the defendant Interstate Commerce Commission, the enforcement of which is sought to be enjoined by the petition and bill for injunction herein, preventing said order of the Interstate Commerce Commission from remaining in effect during the pendency of petitioners' said proposed appeal to the Supreme Court of the United States or until petitioners can apply to the Supreme Court of the United States for such stay;

Now, therefore, the court hereby finds that petitioners are not entitled to a stay of the said order of the Interstate [fol. 125] Commerce Commission during the pendency of their proposed appeal to the Supreme Court of the United States from the final decree herein, nor until the petitioners can apply to the Supreme Court of the United States for such stay, and said application for a stay of the order of the said Commission is hereby denied.

Done in open court this 9th day of May, 1928.

Frank H. Rudkin, United States Circuit Judge. A. F. St. Sure, United States District Judge. Frank H. Kerrigan, United States District Judge.

[File endorsement omitted.]

[fol. 126] In United States District Court

[Title omitted]

[fol. 127] Petition for Appeal—Filed May 10, 1928

The above named petitioners, and each of them, being aggrieved by the final order or decree of the above entitled

Court heretofore made and entered on the 9th day of May, 1928, do hereby appeal from said decree to the Supreme Court of the United States of America, for the reasons specified in the assignment of errors filed herewith; and they pray that their appeal may be allowed, and that citation be issued as provided by law, and that a transcript of the records, proceedings and documents upon which said decree was based, duly authenticated, be transferred to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

Your petitioners further pray that proper order be made relating to the security to be required of them.

Dated May 10th, 1928.

Herman Phleger, M. E. Harrison, Platt Kent, James E. Lyons, James S. Moore, Jr., Elmer Westlake, [fol. 128] Attorneys for Petitioners. F. M. Angellotti, A. W. Camp, A. L. Halsted, Guy V. Shoup, of Counsel.

(Endorsed:) Receipt of a copy of the within Petition for Appeal is hereby admitted this 10th day of May, 1928. McCutcheon, Olney, Mannon & Greene, Attorneys for California Growers & Shippers Protective League, Intervenor. Geo. J. Hatfield, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 129] In United States District Court

[Title omitted]

[fol. 130] Assignment of Errors—Filed May 10, 1928

Come now the petitioners above named and present this assignment of errors and say that in the record and proceedings in the above entitled cause and the decree (hereinafter referred as to "the decree") made and entered against them therein on the 9th day of May, 1928, there is error in the particulars hereinafter set forth, that is to say:

I

The Court erred in making the decree.

II

The Court erred in making the decree and dismissing said petition, because the order of the Interstate Commerce Commission, described in the Petition and Bill for injunction on file herein and hereinafter referred to as "the order of the Commission," and the rates thereby fixed and required to be established and maintained by the petitioners, and each of said rates, deprive and will deprive the petitioners of their private property for a public use, without just compensation, in violation of the Fifth Amendment to the Constitution of the United States.

III

The Court erred in making the decree and dismissing said petition, because the order of the Commission and the rates [fol. 131] thereby fixed and required to be established and maintained by the petitioners, and each of said rates, deprive and will deprive the petitioners of their property, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

IV

The Court erred in making the decree and dismissing said petition, because the order of the Commission fixes and requires the petitioners to establish and maintain rates for the carriage of goods which will not return to or permit the petitioners to receive, their costs incurred in the carriage of such goods.

V

The Court erred in making the decree and dismissing said petition, because the order of the Commission fixes and requires the petitioner to establish and maintain rates for the carriage of goods which are confiscatory.

VI

The Court erred in making the decree and dismissing said petition, because the order of the Commission requires

the petitioners to carry goods without substantial compensation over the proper cost to the petitioners of carrying the same, in violation of the Fifth Amendment to the Constitution of the United Sates.

VII

The Court erred in making the decree and dismissing said petition, because the order of the Commission is based upon a mistake of law, is not supported by the findings of the Interstate Commerce Commission, and is arbitrary and beyond the power of the Interstate Commerce Commission, [fol. 132] in that the Interstate Commerce Commission failed in its said order, or the proceeding or report upon which the same is based, to make any determination or finding that the rates fixed and required to be established and maintained by the order, or either of them, are reasonable.

VIII

The Court erred in making the decree and dismissing said petition, because the order of the Commission is based upon a mistake of law and is arbitrary and beyond the power of the Interstate Commerce Commission, in that it, without finding that any rates higher than the rates fixed and required to be established and maintained by the order of the Commission were unreasonable with reference to the cost or value of the particular service, or the right of the petitioners to earn a reasonable return upon their property, found such rates unreasonabe by reason of a depression in the business of particular shippers, the inability of such shippers to realize a profit from their shipments, and the relatively prosperous financial condition of the petitioners.

IX

The Court erred in making the decree and dismissing said petition, because the order of the Commission is based upon a mistake of law, is not supported by the findings of the Interstate Commerce Commission and is arbitrary and beyond the power of the Commission, in that the Interstate Commerce Commission did not find that the rates which were in effect at the time that the order of the Commission was made, and, which were lowered or required to be low-

ered by the order of the Commission, were unreasonable or unduly prejudicial, or otherwise in violation of law.

X

[fol. 133] The Court erred in making the decree and dismissing said petition, because the order of the Commission is based upon a mistake of law, is contrary to and unsupported by the findings of the Interstate Commerce Commission and is arbitrary and beyond the power of the Interstate Commerce Commission, in that the Interstate Commerce Commission did find that the rates in effect at the time that the order of the Commission was made, and lowered or required to be lowered by said order, were reasonable and not unduly prejudicial.

XI

The Court erred in making the decree and dismissing said petition, because the order of the Commission is based upon a mistake of law, is not supported by and is contrary to the findings of the Interstate Commerce Commission, and is arbitrary and beyond the power of the Commission, in that the Interstate Commerce Commission found the rates in effect at the time that the order of the Commission was made, and lowered or required to be lowered thereby, were not unreasonable and not unduly prejudicial, but on the contrary that the same were reasonable and not unduly prejudicial, but the said Commission nevertheless based said order and the rates fixed and required to be established and maintained thereby, upon the ground that such rates were necessary to promote the freedom of movement of deciduous fruits in interstate commerce.

XII

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is based upon an error of law, and is arbitrary and beyond the power of the Commission, in that it erroneously based the order [fol. 134] of the Commission and the rates fixed and required to be established and maintained thereby, upon the

condition of the particular industry concerned therein, without regard to the relative conditions prevailing in the several industries of the country.

XIII

The Court erred in making the decree and dismissing the petition of the petitioners, because the order of the Commission is based upon an error of law and is arbitrary and beyond the power of the Commission, in that the Commission erroneously based the Order of the Commission and the rates fixed and required to be established and maintained thereby upon the general condition of the petitioners' business and their financial condition, without regard to the costs of the petitioners or any profit to be earned by them in the transportation of the commodities involved.

XIV

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is based upon an error of law and is arbitrary and beyond the power of the Commission, in that the Commission based said Order and the rates fixed and required to be established and maintained thereby upon the supposed direction by, and authority of the joint resolution of Congress approved January 30, 1925, 43 Statutes at large, page 801 (hereinafter called "the Hoch-Smith Resolution") to prescribe rates for the transportation of the products of an industry in a depressed financial condition at a level below that which would return a reasonable profit, or any profit whatever, to the petitioners.

XV

The Court erred in making the decree and dismissing the [fol. 135] said petition, because the order of the Commission is based upon an error of law, and is arbitrary and beyond the power of the Commission, in that the Commission based said order and the rates fixed and required to be established and maintained thereby, upon the supposed authority of, and direction by, the Hoch-Smith Resolution

and by law to fix rates for the transportation of a commodity at a level which would permit shippers thereof to continue their business at a profit, even though the carriers effected should not be accorded thereby a reasonable profit.

XVI

The Court erred in making the decree and dismissing the said petition because the order of the Commission is based upon an error of law, and is arbitrary and beyond the power of the Commission, in that the Commission based said order and the rates fixed and required to be established and maintained thereby upon the supposed authority of and direction by the Hoch-Smith Resolution and by law to fix rates for the carriage of products of agricultural pursuits in a depressed condition relatively lower than the rates fixed for similar products of other pursuits in a prosperous condidition.

XVII

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is based upon an error of law and is arbitrary and beyond the power of the Commission, in that the said order of the Commission fixed and required to be established and maintained rates for the transportation of a particular commodity pursuant to the terms of the Hoch-Smith Resolution, without consideration and contemporaneous rearrangement of the general rate structure of the carriers or of the country, and the rates for transportation of other commodities.

[fol. 136] XVIII

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is based upon an error of law and is arbitrary and beyond the power of the Commission, in that by the said order of the Commission the depressed condition of the deciduous fruit industry was considered, and that the proceeding upon which said order is based was not a general or thorough investigation of the general rate structure of the carriers subject to the Interstate Commerce Act, or of the carriers of the country.

XIX

The Court erred in making the decree and dismissing the said petition, because the said order of the Commission was based upon the Hoch-Smith Resolution, which was applied in a proceeding instituted by a single class of shippers affecting a single rate or class of rates.

XX

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is arbitrary, contrary to the evidence and without any evidence to support it, in that the finding of the Commission in the report upon which its order is based that the rates existing at the time of the making of the order of the Commission are unreasonable is without any evidence to support it.

XXI

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is arbitrary, contrary to the evidence and without any evidence to support it, in that the finding of the Commission in the report upon which the order of the Commission is based [fol. 137] that any rates higher than the rates fixed thereby are unreasonable is without evidence to support it and is contrary to the evidence, since it affirmatively appears from the evidence before the Commission that the petitioners will sustain a net loss for each carload of freight carried pursuant to said order.

XXII

The Court erred in making the decree and dismissing the petition of the petitioners, because the order of the Commission is arbitrary, contrary to the evidence and without evidence to support it, in that the report upon which the order of the Commission is based found that any rates higher than the rates fixed thereby are unreasonable. It affirmatively appears from the evidence introduced before the Commission that the rates fixed by said order would not return to the carrier a substantial profit or a substantial return over and above its costs of said service.

XXIII

The Court erred in making the decree and dismissing the petition of the petitioners, because the order of the Commission is arbitrary, contrary to the evidence and without any evidence to support it, in that the finding of the Commission that there was an existing depression in the whole of the deciduous fruit industry is contrary to the evidence. It appears from the evidence without contradiction that there is and has been no depression in the business of producing certain of the commodities referred to in said order of the Commission, to-wit, peaches, apricots, and cherries.

XXIV

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is arbitrary, contrary to the evidence, and without any evidence [fol. 138] to support it, in that the finding of the Commission that a reduction in the rates for the transportation of deciduous fruits from California to transcontinental groups A to M, inclusive, maintained by the petitioners at the time of the making of the said order of the Commission was and is necessary to promote the freedom of movement of carriers of deciduous fruits in interstate commerce is contrary to the evidence. It appears from the evidence before the Commission without contradiction that all of said deciduous fruits are and have been moving freely in interstate commerce and that the freedom of movement thereof in interstate commerce has rapidly increased and will continue to move in increasing volume.

XXV

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is erroneous and based upon a mistake of law, in that the Commission construed the Hock-Smith Resolution and the law to authorize and require it to reduce reasonable rates to promote the freedom of movement by common carriers of the products of agriculture affected by a depression, if the shippers involved are not making a profit and notwithstanding the hauling of a large and increasing volume of traffic in the industry involved.

XXVI

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is arbitrary, contrary to the evidence and without evidence to support it, in that the finding of the Commission that the rates fixed by said order of the Commission were and are the lowest possible lawful rates compatible with the maintenance of adequate transportation service is contrary to the evidence.

[fol. 139]

XXVII

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is arbitrary and contrary to the evidence, in that the finding of the Commission that the rates fixed by said order were and are the lowest possible lawful rates compatible with the maintenance of adequate transportation service is without evidence to support it and is contrary to the evidence. It appeared from the evidence before the Commission that the said rates maintained by the petitoners at the time of the making of said order were and are the lowest possible lawful rates compatible with the maintenance of adequate transportation service and that the rates fixed and required to be established and maintained by said order are and will be incompatible with the maintenance of adequate transportation service, in that they, and each of them, are and will be insufficient to pay any profit whatever to petitioners, and will be insufficient to return to the petitioners the costs property allocable to the services to be rendered.

XXVIII

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is arbitrary and contrary to the evidence, in that the finding of the Commission that the rates fixed by said order were and are the lowest possible lawful rates compatible with the maintenance of adequate transportation service is contrary to the evidence. It appeared from the evidence before the Commission without contradiction, that the rates fixed and required to be established and maintained by said order

are and will be incompatible with the maintenance of adequate transportation service, because they, and each of them, will not permit the petitioners a reasonable return for [fol. 140] the services performed and are and will be insufficient to pay to the petitioners a substantial profit or any compensation in excess of a slight margin over operating expenses.

XXIX

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is arbitrary and contrary to the evidence, in that the finding of the Commission that the rates fixed by said order were and are the lowest lawful rates compatible with the maintenance of adequate transportation service is contrary to the evidence. It appeared from the evidence before the Commission, without contradiction, that the rates fixed and required to be established and maintained by said order are and will be incompatible with the maintenance of adequate transportation service, because each of the rates which were reduced by said order were reasonable and did not afford to the petitioners a fair return upon the aggregate value of the railway property used in the service of transporting the commodities affected by said rates and because neither the petitioners nor the carriers of the country as a whole were, at the time the order of the Commission was made, earning a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation as required by the provisions of Section 15a of the Interstate Commerce Act, and because the order of the Commission does and will further reduce the return to the petitioners and the carriers of the country as a whole, upon the aggregate value of said railway property.

XXX

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is arbitrary, contrary to the evidence and without evidence to sup- [fol. 141] port it, in that the finding of the Commission that the rates fixed by the order of the Commission were required by due regard to the general and comparative levels in market value of the various classes and kinds of, com-

modities as indicated over a reasonable period of years, is without evidence to support it, and is contrary to the evidence. No evidence whatever was introduced before the Commission with respect to the general and comparative levels in market value of the various classes and kinds of commodities. No evidence whatever was introduced with respect to the market value of any commodities except deciduous fruits and certain other agricultural products between 1917 and 1926, and no evidence was introduced with reference to the market value of any commodity over a reasonable period of years. No evidence whatever was introduced as to the general and comparative levels in market value of deciduous fruits and of other classes and kinds of commodities whatever, except certain other agricultural products.

XXXI

The Court erred in making the decree and dismissing the petition of the petitioners, because the order of the Commission is arbitrary, contrary to the evidence and without any evidence to support it, in that the assumption of the Commission in the report upon which said order is based that the increased minimum load prescribed under the rates specified by the order would make some increase in the average revenue per car is without evidence to support it.

XXXII

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is arbitrary and beyond its power, in that the Commission in the report upon which the order of the Commission is based [fol. 142] found that the rates fixed and required to be established and m-intained thereby will afford to the petitioners a return slightly in excess of their operating expenses, but the Commission nevertheless erroneously concluded that the rates existing at the time the order was made are unreasonable.

XXXIII

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is arbitrary and beyond its power, in that the Commission found in the report upon which the order of the Commission is

based that the rates fixed and required to be established and maintained thereby are slightly above operating expenses. The rates fixed by order of the Commission are, therefore, unreasonable and do not afford the petitioners a reasonable return or a substantial compensation.

XXXIV

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is arbitrary and beyond its power, in that the Commission found in the report upon which the order of the Commission is based that the rates fixed and required to be established and maintained thereby are merely in excess of the rates which will afford to the petitioners some margin of profit, and in that the Commission did not find that the rates fixed and required to be established and maintained thereby would afford to the petitioners more than some margin of profit.

XXXV

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is arbitrary and beyond its power, in that the Commission found in the report upon which the order of the Commission is [fol. 143] based that there was no depression in the business of producing peaches, apricots and cherries, but the Commission nevertheless erroneously concluded that there was an existing depression in the whole of the deciduous fruit industry.

XXXVI

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is arbitrary and beyond its power, in that the Commission in the report upon which the order of the Commission is based found that deciduous fruits are and have been moving freely in interstate commerce; that there has been a heavy increase in the deciduous fruit traffic in interstate commerce and that deciduous fruit was moving in interstate commerce, at the time of making said order, in unprecedented volume, but the Commission nevertheless erroneously concluded that the rates fixed by the order of the Commission were necessary to promote freedom of movement by the carriers of deciduous fruits in interstate commerce.

XXXVII

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is arbitrary and beyond its power, in that the Commission found in the report upon which the order of the Commission is based that the rates fixed by said order will be insufficient to pay to the carrier more than a slight margin of profit and that the rates fixed by the order of the Commission are merely in excess of that which would return to the carriers some margin of profit, but the Commission nevertheless erroneously concluded that the new rates were and are compatible with the maintenance of adequate transportation service.

XXXVIII

The Court erred in making the decree and dismissing the [fol. 144] said petition, because the order of the Commission is based by the Commission solely upon the Hoch-Smith Resolution, and because the Hoch-Smith Resolution violates the provisions of the Fifth Amendment of the Constitution of the United States and is unconstitutional and void.

XXXIX

The Court erred in making the decree and dismissing said petition, because the order of the Commission is based solely upon the Hoch-Smith Resolution and as construed by the Commission in its report upon which said order is based the Hoch-Smith Resolution permits and requires the fixing of rates which are confiscatory and less than reasonable, and because as so construed by the Commission the Hoch-Smith Resolution violates the provisions of the Fifth Amendment of the Constitution of the United States and is unconstitutional and void.

XL

The Court erred in making the decree and dismissing the petition of the petitioners, because the order is based solely by the Commission upon the Hoch-Smith Resolution, and because in the report upon which said order is based the Commission construed the Hoch-Smith Resolution as permitting and requiring the fixing of rates, not according

to any standard of reasonableness nor upon the cost or value of the service rendered to the shipper, but upon the existence of a depression in the business of particular shippers and the inability of such shippers to realize a profit from their shipments, and upon the relatively prosperous condition of the carriers' finances, and because as so construed the Hoch-Smith Resolution violates the provisions of the Fifth Amendment of the Constitution of the United States and is unconstitutional and void.

[fol. 145] XLI

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is based upon a mistake of law and is erroneous and beyond the power of the Commission, in that in making the order and the report upon which the same is based, the Commission violated the provisions of Section 15a of the Interstate Commerce Act by reducing reasonable rates of the petitioners and thereby reducing their income and profit, notwithstanding the fact that the petitioners were and are not, nor were nor are the carriers as a whole, earning an aggregate annual net railway operating income equal as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation.

XLII

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is not supported by the findings of the Commission and is contrary thereto, in that the Commission in and by said report found that the petitioners, and the carriers in the country as a whole, were not making the fair return provided for under Section 15a of the Interstate Commerce Act, but nevertheless by said order reduced reasonable rates of the petitioners, thereby depriving the petitioners of compensation and return to which they are entitled pursuant to the provisions of said Section 15a of the Interstate Commerce Act.

XLIII

The Court erred in making the decree and dismissing the said petition, because the order and the rates fixed and required to be established and maintained thereby are based [fol. 146] upon an error of law, to wit: That the Commission construed the law to authorize and require it to violate the provisions of Section 3 of the Interstate Commerce Act and construed the Hoch-Smith Resolution as authorizing and permitting it to fix rates resulting in an undue preference in favor of a particular locality as compared with others.

XLIV

The Court erred in making the decree and dismissing the said petition, because the order of the Commission is beyond the power of the Commission, in that the rates fixed thereby violate the provisions of Section 3 of the Interstate Commerce Act and accord to shippers of deciduous fruits from points in California to transcontinental destinations an undue preference as compared with shippers of other localities.

XLV

The Court erred in making the decree and dismissing the said petition, because the order of the Commission and the report upon which it is based are founded upon an error of law and violate the provisions of Section 15a of the Interstate Commerce Act, in that the rates fixed and required to be established and maintained thereby, constitute reductions in the said rates and do not and will not yield to the petitioners a fair return, and that the Commission did not in and by said order, or in said proceeding, fix rates that would yield to the petitioners compensation for the reductions made thereby.

XLVI

The Court erred in making the decree and dismissing the said petition, because the order of the Commission and the rates fixed and required to be established and maintained thereby, and each of them, were and are based upon [fol. 147] an error of law and are arbitrary and in excess of the power of the Commission, in that the Commission

construed the Hoch-Smith Resolution as a mandate to it to reduce reasonable rates upon agricultural products in a condition of depression.

XLVII

The Court erred in making the decree and dismissing the said petition, because the order of the Commission and the report upon which the same is based are arbitrary, beyond the power of the Commission and based upon an error of law, in that in the proceeding pursuant to which said report and order were made, and in said report and order, the Commission imposed upon the petitioners the burden of proof to establish that the rates which were reduced by said order were reasonable.

XLVIII

The Court erred in making the decree and dismissing the said petition, because the order of the Commission, and the report upon which the same is based, are arbitrary, beyond the power of the Commission and based upon an error of law, in that the Commission erroneously imposed upon the petitioners the burden of proof to establish that the rates prescribed in said order of the Commission are not the lowest possible lawful rates compatible with the maintenance of adequate transportation service.

XLIX

The Court erred in making the decree and dismissing the said petition because the order of the Commission is based upon a mistake of law and is arbitrary and beyond the power of the Interstate Commerce Commission in this: The Commission found that rates higher than the rates which it fixed and required to be established and maintained would not be unreasonable, considering the cost and value of the service, nor unreasonable, taking into consideration [fol. 148] the right of petitioners to earn a reasonable return; but said Commission held that higher rates would be unreasonable because of the existence of a depression in the business of certain shippers, the inability of such shippers to realize a profit from their shipments and the relatively prosperous financial condition of the petitioner.

L

The Court erred in sustaining the order of the Commission, and each of the rates fixed thereby.

LI

The Court erred in making the decree and dismissing said petition, because the order of the Commission is based upon a mistake of law and is arbitrary and beyond the power of the Commission, in that the Commission erroneously construed the Hoch-Smith Resolution as empowering it to fix rates established by said order for the purpose of regulating conditions in a particular industry, and the Hoch-Smith Resolution as so construed is beyond the power of Congress as defined in the Constitution of the United States, and void.

LII

The Court erred in making the decree and dismissing said petition, because the order of the Commission is based upon a mistake of law and is arbitrary and beyond the power of the Commission, in that the Commission based said order upon the Hoch-Smith Resolution and said Hoch-Smith Resolution is beyond the power of Congress as defined in the Constitution of the United States and void.

Wherefore the petitioners above named pray that the said decree entered herein on the 9th day of May, 1928, be reversed, with directions that the said petition of the peti-[fol. 149] tioners be granted, and for such other and further relief as may be appropriate.

Herman Phleger, M. E. Harrison, Platt Kent, James E. Lyons, James S. Moore, Jr., Elmer Westlake, Attorneys for Petitioners. F. M. Angellotti, E. W. Camp, A. L. Halsted, Guy V. Shoup, of Counsel.

Receipt of a copy of the within Assignment of Errors is hereby admitted this 10th day of May, 1928.

McCutcheon, Olney, Mannon & Greene, Attorneys for California Growers' and Shippers' Protective League, Intervener. Geo. J. Hatfield, Attorney for Defendants.

[File endorsement omitted.]

[fol. 150] IN UNITED STATES DISTRICT COURT

[Title omitted]

[fol. 151] ORDER ALLOWING APPEAL—Filed May 10, 1928

The petitioners in the above-entitled suit and each of them, having prayed for the allowance of an appeal in the above-entitled cause to the Supreme Court of the United States from the decree made and entered in the above entitled suit by the above-named Court on the 9th day of May, 1928, and from each and every part thereof, and having presented and filed their assignment of errors pursuant to the statutes and rules of said Court in such cases made and provided;

It is hereby ordered that citation be issued as provided by law and that a transcript of the records, proceedings and papers upon which said decree was based, duly authenticated, be transferred to the Supreme Court of the United States under the rules of said Court in such cases made and provided;

And it is further ordered that security for costs on appeal be fixed in the sum of $500.00.

Dated May 10th, 1928.

Frank H. Rudkin, United States Circuit Judge.
A. F. St. Sure, United States District Judge.
Frank H. Kerrigan, United States District Judge.

[File endorsement omitted.]

[fols. 152-157] "Bond on appeal for $500, approved and filed May 10, 1928," [omitted in printing.]

[fol. 158] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ENLARGING TIME TO PREPARE STATEMENT ON APPEAL—Filed May 10, 1928

Good cause appearing therefor, it is hereby ordered that the petitioners in the above entitled suit may have, and

they are hereby allowed, to and including June 10, 1928, within which to prepare and lodge in the Clerk's office a statement of the evidence and file with the Clerk a præcipe, in accordance with Equity Rule 75, upon appeal from the decree of the above named Court made and entered herein on the 9th day of May, 1928.

Dated May —, 1928.

Frank H. Rudkin, Circuit Judge. A. F. St. Sure, District Judge. Frank H. Kerrigan, District Judge.

[File endorsement omitted.]

[fol. 159] In United States District Court

[Title omitted]

Notice of Appeal—Filed May 17, 1928

To the Honorable U. S. Webb, Attorney General of the State of California:

You are hereby notified that on the 10th day of May, A. D. 1928, the appeal of the petitioners and each of them to the Supreme Court of the United States in the above entitled suit was allowed from the decree of the above named court, dismissing the Petition and Bill for Injunction of said petitioners in said suit; that said petitioners have filed with the above named court the bond required by said order, and that the citation issued, pursuant to the provisions of said order, a copy of which is hereto attached, has been made returnable within sixty days from the date thereof.

This notice is given to you, pursuant to urgent de-
[fol. 160] ficiencies act, October 22, 1913 (38 U. S. Stat. L. 221).

Dated February 16, 1928.

Herman Phleger, M. E. Harrison, Platt Kent, James E. Lyons, James S. Moore, Jr., Elmer Westlake, Attorneys for said Petitioners.

Service of copy of the within Notice and the Citation

therein referred to, is hereby admitted and acknowledged this 16th day of May, A. D., 1928.

U. S. Webb, W. D., Attorney General of the State of California. (Seal U. S. District Court, Northern District of California.)

[File endorsement omitted.]

[fol. 161] In United States District Court

[Title omitted]

Notice of Appeal—Filed June 8, 1928

To United States of America, Interstate Commerce Commission, and California Growers' & Shippers' Protective League, appellees, and to the United States District Attorney for the Northern District of California, the Attorney General of the United States, J. Stanley Payne, Esq.; McCutcheon, Olney, Mannon and Greene, and A. P. Matthew, Esq., the Attorneys for said Appellees:

Please take notice that the petitioners in the above entitled suit, and each of them, have appealed and do hereby appeal to the Supreme Court of the United States from the final decree of the above entitled Court heretofore made herein and entered on the 9th day of May, 1928, and from each and every part thereof.

Dated May 31, 1928.

Herman Phleger, M. E. Harrison, Platt Kent, James
[fol. 162] E. Lyons, James S. Moore, Jr., Elmer Westlake, Attorneys for Petitioners. F. M. Angellotti, E. W. Camp, A. L. Halstead, Guy V. Shoup.

[File endorsement omitted.]

[fol. 163] "Acknowledgment of service of Assignment of Errors, Order allowing appeal and citation, showing service of said documents upon the Solicitor General for the United States and the attorney for the Interstate Commerce Commission, filed June 13, 1928," [omitted in printing].

[fols. 164 & 165] "Acknowledgment of service of Notice of Appeal showing service of same upon Solicitor General of the United States and the Attorney for Interstate Commerce Commission, filed June 13, 1928" [omitted in printing].

[fol. 166] In United States District Court

No. 1987. In Equity

The Ann Arbor Railroad Company, et al., Petitioners,

vs.

United States of America et al., Defendants

Statement of the Evidence

This cause came on for trial before the above-entitled Court, Honorable A. F. St. Sure, District Judge, presiding, and Honorable Frank H. Kerrigan, District Judge and Honorable Frank H. Rudkin, Circuit Judge, assisting, on the first day of May, A. D. 1928.

Messrs. Herman Phleger, M. E. Harrison, Platt Kent and James S. Moore, Jr., appeared for the petitioners.

George C. Hatfield, Esq., United States District Attorney for the Northern District of California, appeared on behalf of the defendants.

Messrs. Allan P. Matthew, John F. Cassell and McCutcheon, Olney, Mannon & Greene, appeared on behalf of the Intervenor, California Growers' and Shippers' Protective League.

Thereupon, evidence was taken and objections thereto and rulings thereon made as hereinafter set forth.

[fol. 167] The Petitioners offered in evidence a certified copy of the record in the proceedings before the Commission in "Docket No. 19130, California Growers' & Shippers' Protective League, Complainants, vs. The Atchison, Topeka and Santa Fe Railway Company, et al., Defendants," which said record was thereupon admitted in evidence and marked "Petitioners' Exhibit 1." Said Petitioner's Exhibit 1 is in the following form:

PETITIONERS' EXHIBIT 1

Condensed Statement of Pleadings Before the Interstate Commerce Commission in Docket No. 19130

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE,
Complainant,

[fol. 168] VS.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Southern Pacific Company, The Western Pacific Railroad Company, Los Angeles & Salt Lake Railroad Company, Union Pacific Railroad Company, Aberdeen and Rockfish Railroad Company, Abilene and Southern Railway Company, The Ahnapee and Western Railway Company, The Akron, Canton & Youngstown Railway Company, The Alabama Great Southern Railroad Company, The Ann Arbor Railroad Company, Arkansas Harbor Terminal Railway, Arcade and Attica Railroad Corporation, Arizona Southern Railroad Company, Arkansas & Louisiana Missouri Railway Company, The Arkansas Western Railway Company, Ashley, Drew & Northern Railway Company, Atlanta & Saint Andrews Bay Railway Company, Atlanta and West Point Rail Road Company, Atlanta, Birmingham & Atlantic Railway Company, (B. L. Bugg, Receiver), Atlantic and Yadkin Railway Company, (A. E. Smith and J. W. Fry, Receivers), Atlantic City Railroad Company, Atlantic Coast Line Railroad Company, The Baltimore and Ohio Railroad Company, The Baltimore and Ohio Chicago Terminal Railroad Company, Baltimore, Chesapeake & Atlantic Railway Company, Bangor and Aroostock Railroad Company, Bath and Hammondsport Railroad Company, The Beaumont, Sour Lake & Western Railway Company, The Belt Railway Company of Chicago, Bennettsville and Cheraw Railroad Company, Benton Transit Company, Bessemer and Lake Erie Railroad Company, Birmingham & Northwestern Railway Company, Birmingham & Southeastern Railroad Company, Birmingham Southern Railroad Company, The Bloomsburg and Sullivan Rail-

road Company, Blue Ridge Railway Company, Boston and Albany Railroad, (The New York Central Railroad Company, Lessee), Boston and Maine Railroad, Boyne City, Gaylord and Alpena Railroad Company, The Brandon, Saskatchewan & Hudson's Bay Railway Company, Brimstone Railroad & Canal Company, The Brownwood North and South Railway Company, Buffalo & Susquehanna Railroad Corporation, Buffalo, Rochester and Pittsburg Railway Company, Buffalo, Union-Carolina Railroad, Bullfrog Goldfield Railroad Company, Bush Terminal Railroad Company, Butler County Railroad Company, Canadian National Railway Company, Canadian National Railways, Canadian Pacific Railway Company, The Canadian Pacific Car and Passenger Transfer Company, Limited, Carolina and Northwestern Railway Company, Carolina and Tennessee Southern Railway Company, Carolina, Clinchfield and Ohio Railway, (Atlantic Coast Line Railroad Company and Louisville and Nashville Railroad Company, Lessees), Carolina, Clinchfield and Ohio Railway of South Carolina, (Atlantic Coast Line Railroad Company and Louisville and Nashville Railroad Company, Lessees), Cedar Rapids and Iowa City Railway, Central California Traction Company, Central Indiana Railway Company, Central New [fol. 169] England Railway Company, Central of Georgia Railway Company, The Central Railroad Company of New Jersey, Central Railway Company of Arkansas, Central Vermont Railway Company, Charles City Western Railway Company, Charleston & Western Carolina Railway Company, The Chatham, Wallaceburg and Lake Erie Railway Company, The Chesapeake and Ohio Railway Company, Chesapeake Western Railway, Chesterfield and Lancaster Railroad Company, Chestnut Ridge Railway Company, The Chicago and Alton Railroad Company, (William W. Wheelock and William G. Bierd, Receivers), Chicago and Eastern Illinois Railway Company, Chicago and Erie Railroad Company, Chicago & Illinois Midland Railway Company, Chicago & Illinois Western Railroad, Chicago & North Western Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago Great Western Railroad Company, Chicago, Harvard & Geneva Lake Railway Company, Chi-

cago, Indianapolis and Louisville Railway Company, Chicago, Kalamazoo and Saginaw Railway Company, Chicago, Milwaukee and Gary Railway Company, Chicago, Milwaukee and St. Paul Railway Company, (H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers), The Chicago, Rock Island and Gulf Railway Company, The Chicago, Rock Island and Pacific Railway Company, Chicago, St. Paul, Minneapolis and Omaha Railway Company, Chicago, West Pullman & Southern Railroad Company, Chicago, Springfield & St. Louis Railway Company, Jacksonville & Havana Railroad Company, Christie & Eastern Railway Company, Cincinnati, Burnside & Cumberland River Railway Company, The Cincinnati, Indianapolis & Western Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Cincinnati Northern Railroad Company, Cisco & Northeastern Railway Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Clinton and Oklahoma Western Railroad Company, Clinton, Davenport & Muscatine Railway Company, The Colorado and Southeastern Railroad Company, The Colorado and Southern Railway Company, The Colorado & Wyoming Railway Company, Columbia, Newberry and Laurens Railroad Company, Columbus and Greenville Railway Company, The Cooperstown and Charlotte Valley Rail-road Company, Copper Range Railroad Company, Cornwall Railroad Company, Coudersport and Port Allegany Railroad Company, Cumberland and Pennsylvania Railroad Company, The Dansville and Mount Morris Railroad Company, (E. M. Harter and Clifford Hubbell, Receivers), Danville and Western Railway Company, Dardanelle & Russellville Railroad Company, Dayton and Union Railroad Company, Deep Creek Railroad Company, Deering Southwestern Railway, The Delaware and Hudson Company, The Delaware, Lackawanna and Western Railroad Company, The Denison and Pacific Suburban Railway Company, The Denver and Rio Grande Western Railroad Company, DeQueen and Eastern Railroad Company, Des Moines & Central Iowa Railroad, The Detroit and Huron Railway Company, Detroit [fol. 170] and Mackinac Railway Company, The Detroit and Toledo Shore Line Railroad Company, Detroit, Toledo and Ironton Railroad Company, The Dominion

Atlantic Railway Company, Doniphan, Kensett & Searcy Railway, Duluth, Missabe and Northern Railway Company, The Duluth, South Shore and Atlantic Railway Company, Duluth, Winnipeg and Pacific Railway Company, Durham and Southern Railway Company, East Jordan & Southern Railroad Company, Eastland, Wichita Falls & Gulf Railroad Company, Elberton & Eastern Railroad Company, El Dorada and Wesson Railway Company, Elgin, Joliet and Eastern Railway Company, Erie Railroad Company, Escanaba and Lake Superior Railroad Company, The Essex Terminal Railway Company, Evansville, Indianapolis & Terre Haute Railway Company, The Fairport, Painesville and Eastern Railroad Company, Florida East Coast Railway Company, Fonda, Johnstown and Gloversville Railroad Company, Fordyce and Princeton R. R. Co., Fort Dodge, Des Moines & Southern Railroad Company, Fort Smith and Western Railway Company, Fort Smith, Subiaco & Rock Island Railroad Company, Fort Worth and Denver City Railway Company, Fort Worth & Rio Grande Railway Company, Frankfort and Cincinnati Railway Company, (Robert Scott and John H. Switzer, Receivers), The Franklin and Abbeville Railway Company, Gainesville Midland Railway, (Gordon C. Carson and W. B. Veazey, Receivers), The Galveston, Harrisburg, and San Antonio Railway Company, Galveston, Houston and Henderson Railroad Company, Genesee and Wyoming Railroad Company, Georgia and Florida Railway, (H. W. Purvis, Receiver), Georgia, Ashburn, Sylvester & Camilla Railway Company, Georgia, Florida & Alabama Railway Company, The Georgia Northern Railway Company, Georgia Railroad, Georgia Southern and Florida Railway Company, The Georgia Southwestern and Gulf Railroad Company, The Gettysburg and Harrisburg Railway Company, Grafton and Upton Railroad Company, The Grand Rapids, Grand Haven and Muskegon Railway Company, (Grand Rapids Trust Co., Receiver), The Grand River Railway Company, Grand Trunk Railway System, Grand Trunk Western Railway Company, Great Northern Railway Company, The Great Western Railway Company, Green Bay and Western Railroad Company, Greenwich & Johnsonville Railway Company, The

Gulf and Sabine River Railroad Company, Gulf and Ship Island Railroad Company, Gulf & Southern Steamship Company, Gulf, Colorado and Santa Fe Railway Company, Gulf, Mobile and Northern Railroad Company, Gulfport and Mississippi Coast Traction Company, Gulf, Texas & Western Railway Company, (W. Frank Knox, Receiver), The Hagerstown and Frederick Railway Company, The Hamilton, Grimsby & Beamsville Electric Railway Company, Hartwell Railway Company, High Point, Randleman, Asheboro and Southern Railroad Company, The Hocking Valley Railway Company, Bolton Inter-Urban Railway Company, Houston and Brazos Valley Railway Company, Houston and Shreveport Railroad Company, Houston & Texas Central Rail-
[fol. 171] road Company, The Houston East and West Texas Railway Company, The Hull Electric Company, The Huntington and Broad Top Mountain Railroad and Coal Company, Iberia and Vermilion Railroad Company, Illinois Central Railroad Company, Illinois Northern Railway, Illinois Terminal Company, Indiana Harbor Belt Railroad Company, Inter-California Railway Company, International-Great Northern Railroad Company, Interstate Railroad Company, Iowa Southern Utilities Company, The Ironton Railroad Company, (Lehigh Valley, Railroad Company, Reading Company, Lessees), Joplin and Pittsburg Railway Company, (M. H. MacLean, Receiver), Kane and Elk Railroad Company, The Kansas City, Kaw Valley and Western Railway Company, (Harry C. Jobes, Receiver), Kansas City, Mexico and Orient Railway Company, (Lines in Mexico), (William T. Kemper and S. W. Rider, Receivers), Kansas City, Mexico and Orient Railway Company of Texas, The Kansas City Southern Railway Company, Kansas, Oklahoma & Gulf Railway Company, Kansas, Oklahoma & Gulf Railway Company of Texas, Kewaunee, Green Bay and Western Railroad Company, Lackawanna and Wyoming Valley Railroad Company, LaCrosse and Southeastern Railway Company, Lake Charles & Northern Railroad Company, The Lake Erie and Eastern Railroad Company, The Lake Erie and Northern Railway Company, Lake Superior & Ishpeming Railroad Company, Laurinburg and Southern Railroad Company, The Leavenworth & Topeka Railroad Company, Leesville, Slagle

and Eastern Railway Company, The Lehigh and Hudson River Railway Company, Lehigh and New England Railroad Company, Lehigh Valley Railroad Company, Litchfield and Madison Railway Company, The London and Port Stanley Railway, The Long Island Rail Road Company, The Lorain & West Virginia Railway Company, Louisiana & Arkansas Railway Company, The Louisiana and North West Railroad Company, Louisiana and Pacific Railway Company, Louisiana Railway & Navigation Company of Texas, Louisiana Western Railroad Company, Louisville and Nashville Railroad Company, Louisville, Henderson & St. Louis Railway Company, Lufkin, Hemphill and Gulf Railway Company, Macon, Dublin & Savannah Railroad Company, Magma Arizona Railroad Company, Maine Central Railroad Company, Manistee and North-Eastern Railroad Company, (The Michigan Trust Company, Receiver), Manitoba Great Northern Railway Company, Marinette, Tomahawk & Western Railroad Company, Marion Railway Corporation, Maryland and Pennsylvania Railroad Company, Mason City and Clear Lake Railroad Company, Maxton, Alma and Southbound Railroad Company, McCloud River Railroad Company, The Michigan Central Railroad Company, Michigan Railroad Company, (John F. Collins, Receiver), Midland Continental Railroad, The Midland Railway Company of Manitoba. The Midland Terminal Railway Company, Midland Valley Railroad Company, Mineral Point and Northern Railway Company, Mineral Range Railroad Company, The Minneapolis & St. Louis [fol. 172] Railroad Company, (W. H. Bremner, Receiver), Minneapolis, Northfield and Southern Railway, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Minnesota and International Railway Company. Mississippi Central Railroad Company, Mississippi River and Bonne Terre Railway, Missouri and North Arkansas Railway Company, Missouri-Illinois Railroad Company, Missouri-Kansas Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, Missouri Pacific Railroad Company, Missouri Pacific Railroad Corporation in Nebraska, Mobile and Ohio Railroad Company, Modesto and Empire Traction Company, The Monongahela Railway Company, Montour Railroad

Company, Montpelier and Wells River Railroad, Morgan's Louisiana and Texas Railroad and Steamship Company, Moshassuck Valley Railroad Company, Mount Jewett, Kinzua and Riterville Railroad Company, The Muscle Shoals, Birmingham and Pensacola Railroad Company, Napierville Junction Railway Company, The Nashville Chattanooga & St. Louis Railway, Natchez & Southern Railway Company, Nevada-California-Oregon Railway, Nevada Copper Belt Railroad Company, (J. I. Wilson, Receiver), Nevada County Narrow Guage Railroad Company, Nevada Northern Railway Company, New Iberia & Northern Railroad Company, The New Jersey and New York Railroad Company, New Jersey, Indiana & Illinois Railroad Company, New Orleans and Northeastern Railroad Company, New Orleans Great Northern Railroad Company, New Orleans, Texas & Mexico Railway Company, The New York and Long Branch Railroad Company, New York and Pennsylvania Railway Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, New York Dock Railway, The New York, New Haven and Hartford Railroad Company, New York, Ontario and Western Railway Company, New York, Susquehanna and Western Railroad Company, Norfolk and Western Railway Company, Norfolk Southern Railroad Company, Northern Alabama Railway Company, The Northern Ohio Railway Company, Northern Pacific Railway Company, North Louisiana & Gulf Railroad Company, Northwestern Pacific Railroad Company, Oklahoma-Southwestern Railway Co., Okmulgee Northern Railway Company, The Orange & Northwestern Railroad Company, Oregon Short Line Railroad Company, Oregon-Washington Railroad & Navigation Company, Osage Railway Company, Pacific Coast Railway Company (California), Pacific Electric Railway Company, Paducah & Illinois Railroad Company, Panhandle and Santa Fe Railway Company, Paris and Great Northern Railroad Company, Paris and Mt. Pleasant Railroad Co., (R. W. Wortham, Receiver), Peninsular Railway Company, The Pennsylvania Railroad Company, Peoria Railway Terminal Company, (H. I. Battles, Receiver), Pere Marquette Railway Company, Petaluma and Santa Rosa Railroad Company,

Pickens Railroad Company, Piedmont and Northern Railway Company, The Pittsburgh and Lake Erie Railroad [fol. 173] Company, The Pittsburgh & Shawmut Railroad Company, The Pittsburgh & West Virginia Railway Company, Pittsburgh, Chartiers & Youghiogheny Railway Company, The Pittsburgh, Lisbon & Western Railroad Company, The Pittsburgh, Shawmut & Northern Railroad Company, (John D. Dickson, Receiver), The Pontiac, Oxford and Northern Railroad Company, Port Huron and Detroit Railroad Company, Prattsburgh Railway Corporation, The Prescott and Northwestern Railroad Company, Quanah, Acme & Pacific Railway Company, The Quebec, Montreal and Southern Railway Company, Quincy, Omaha & Kansas City Railroad Company, Rahway Valley Company, (Rahway Valley Company, Lessee), Raleigh & Charleston Railroad Company, The Rapid Railroad Company, (Security Trust Company and W. C. Dunbar, Receivers), The Rapid Railway Company, (Security Trust Company and W. C. Dunbar, Receivers), Raritan River Rail Road Company, Reynoldsville and Falls Creek Railroad Company, Richmond, Fredericksburg and Potomac Railroad Company, Rio Grande and Eagle Pass Railway Company, Rockingham Railroad Company, Rock Island Southern Railway Co., Roscoe, Snyder and Pacific Railway Company, Rutland Railroad Company, Sacramento Northern Railway, Sacramento Transportation Co., Sacramento Valley and Eastern Railway, The St. Johnsbury & Lake Champlain Railroad Company, The St. Joseph and Grand Island Railway Company, St. Louis and Hannibal Railroad Company, The St. Louis, Brownsville and Mexico Railway Company, St. Louis, Kennett & Southeastern Railroad Company, St. Louis Merchants Bridge Terminal Railway Company, St. Louis, San Francisco and Texas Railway Company, St. Louis San-Francisco Railway Company, St. Louis Southwestern Railway Company, St. Louis Southwestern Railway Company of Texas, The St. Louis, Troy and Eastern Rail Road Company, San Antonio Southern Railway Company, San Antonio, Uvalde & Gulf Railroad Company, San Diego and Arizona Railway Company, Sands Springs Railway Company, Sandy River and Rangeley Lakes Railroad, (Josiah S. Maxcy

and Herbert S. Wing, Receivers), San Francisco-Sacramento Railroad Company, Santa Maria Valley Railroad Company, Savannah and Atlanta Railway, (Charles E. Gay, Jr., Receiver), Seaboard Air Line Railway Company, South Brooklyn Railway Company, Southern Pacific Railroad Company of Mexico, Southern Railway Company, The South Georgia Railway Company, South Manchester Railroad Company, Spokane, Portland and Seattle Railway Company, The Staten Island Rapid Transit Railway Company, The Stewartstown Railroad Company, Stockton Terminal and Eastern Railroad, Sugar Land Railway Company, Sunset Railway Company, Susquehanna and New York Railroad Company, Tallulah Falls Railway Company, (J. F. Gray, Receiver), Tama and Toledo Railroad Company, Tampa Northern Railroad Company, Temiscouata Railway Company, Tennessee, Alabama and Georgia Railway, Terminal Railroad Association of St. Loui Texarkana and Fort Smith Rail- [fol. 174] way Company, Texas and New Orleans Railroad Company, The Texas and Pacific Railway Company, Texas City Terminal Railway Company, The Texas Mexican Railway Company, Texas Midland Railroad, Texas, Oklahoma & Eastern Railroad Company, Texas Short Line Railway Company, Texas Southeastern Railroad Company, Thornton and Alexandria Railway Company, The Thousand Islands Railway Company, Tidewater Southern Railway Company, Tijuana and Tecate Railway Company, Tionesta Valley Railway Company, Toledo and Western Railway Company, Toledo, Peoria & Western Railway Company, (Samuel M. Russell, Receiver), The Toledo Terminal Railroad Company, Tonopah and Coldfield Railroad Company, Tonopah and Tidewater Railroad Company, The Toronto, Hamilton and Buffalo Railway Company, Tremont & Gulf Railway Company, The Trinity and Brazos Valley Railway Company, (John A. Hulen, Receiver), Trona Railway Company, Tucson, Cornelia and Gila Bend Railroad Company, The Union Point and White Plains Railroad Company, Union Railway Company (Memphis, Tenn.), United Electric Railways Company, Ulvade & Northern Railway Company, The Valley Railroad Company (of Va.), Ventura County Railway Company, The Virginian Railway Company, Visalia Electric Railroad Company, Wa-

bash Railway Company, Warren & Ouachita Valley Railway Company, Warren & Saline River Railroad Company, Washington & Vandemere Railroad Company, Washington, Baltimore and Annapolis Electric Railroad Company, Waterloo, Cedar Falls and Northern Railway Company, The Weatherford, Mineral Wells and Northwestern Railway Company, Western Allegheny Railroad Company, Western Maryland Railway Company, The Western Railway of Alabama, West Jersey and Seashore Railroad Company, West Shore Railroad, (The New York Central Railroad Company, Lessee), West Side Belt Railroad Company, West Virginia Northern Railroad Company, The Wheeling and Lake Erie Railway Company, Wichita Falls & Southern Railroad Company, Wichita Falls, Ranger & Fort Worth Railroad Company, The Wichita Northwestern Railway Company, (O. P. Byers, Receiver), The Wichita Valley Railway Company, The Wilkes-Barre and Eastern Railroad Company, The Wilkes Barre and Hazelton Railway Company, Williamsport & North Branch Railway Co., The Williams Valley Railroad Company, The Windsor, Essex and Lake Shore Rapid Railway Company, Winston-Salem Southbound Railway Company, Wisconsin & Michigan Railroad Company, Wood River Branch Railroad Company, Wrightsville and Tennille Railroad Company, Yadkin Railroad Company, The Yazoo and Mississippi Valley Railroad Company, and the Youngstown & Ohio River Railroad Company, Defendants

[fol. 175] COMPLAINT

The complaint of the above-named complainant respectfully shows:

I

That complainant is a voluntary non-profit association organized under the laws of the State of California, having its principal office in the City and County of San Francisco, California;

That the objects for which the complainant is organized, as set forth in complainant's by-laws, are:

"First. To protect the interests of growers and shippers by securing just and equitable freight rates on deciduous fruit shipments.

"Second. To protect the deciduous fruit industry against all unjust discriminations and exactions on the part of carriers.

"Third. To promote the general benefit and upbuilding of the deciduous fruit industry."

That complainant's membership comprises growers of deciduous fruits in the State of California and shippers of such deciduous fruits from points in the State of California to points without the boundaries of said State, and associations of such growers and shippers; that, in particular, complainant's membership includes representatives of approximately 18,000 growers of deciduous fruits in the State of California, and that the volume of their product amounts substantially to 85% of the entire production of deciduous tree fruits and 65% of the production of grapes in the State of California;

[fol. 176] That complainant's members are largely engaged in the shipment of deciduous fruits by railroad from points in the State of California to points in other states of the United States, in the District of Columbia, and in the Dominion of Canada.

II

That the defendants above named are common carriers engaged in the transportation of property wholly by railroad, according as their several routes may run, between points in the State of California and points in other states of the United States, the District of Columbia, and the Dominion of Canada, and that as such common carriers defendants are subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof and supplementary thereto.

III

That defendants act in concert in the matter of the publication of certain of their schedules of rates through an association of carriers styled Trans-Continental Freight Bureau, and by H. G. Toll, defendants' agent and attorney for the publication of such schedules; that defendants have, through the said Trans-Continental Freight Bureau, and

by the said H. G. Toll, as their agent and attorney, published and filed with the Interstate Commerce Commission a certain schedule of rates designated as Trans-Continental Freight Bureau East-Bound Tariff No. 3-T, I. C. C. No. 1164, which said tariff was issued upon March 1, 1926, and became effective upon April 16, 1926; that, subsequently [fol. 177] to the publication of said tariff, defendants have published and filed with the Interstate Commerce Commission, through said Trans-Continental Freight Bureau, and by said H. G. Toll, various supplements to said tariff, including Supplement No. 12 thereto, which said supplement was issued upon June 25, 1926, and became effective upon August 15, 1926; that each of said defendants is a participating carrier in said Trans-Continental Freight Bureau East-Bound Tariff No. 3-T, and in said Supplement No. 12 thereto, and has constituted and appointed said H. G. Toll as its agent and attorney for the publication and filing of the rates in said tariff and in said supplement specified; that in and by said tariff and said Supplement No. 12 thereto defendants have established, and now maintain and enforce, certain local, joint, and proportional commodity rates between points therein specified, including rates upon fresh deciduous fruits (other than apples) from points in the State of California to points in other states, in the District of Columbia, and in the Dominion of Canada, of which rates complaint is hereinafter made; that complainant hereby refers to said tariff and all supplements thereto now in effect, and in particular to Supplement No. 12 thereto, and prays that said tariff and the supplements thereto may be deemed to be a part of this complaint as though the same were herein set out at length.

That hereinafter, for convenience, the term "deciduous fruits" will be employed to mean fresh deciduous fruits [fol. 178] other than apples, as the same are described in Rule 82, Item 304, of said Trans-Continental Freight Bureau East-Bound Tariff No. 3-T; the term "points in the State of California" will be employed to mean points in the State of California from which rates on such deciduous fruits apply, as shown on pages 1 to 64, inclusive, of said Trans-Continental Freight Bureau East-Bound Tariff No. 3-T; and the term "points in other states" will be employed to mean points in states of the United States and in the

District of Columbia and in the Dominion of Canada, as shown upon pages 67 to 98, inclusive, of said Trans-Continental Freight Bureau East-Bound Tariff No. 3-T and designated as groups A, B, C, D, E, F, G, H, J, K, L and M, together with points in the Dominion of Canada to which any of such group rates apply under and by virtue of provisions of said tariff or of supplements thereto.

IV

That for many years prior to the 25th day of June, 1918, the rate established and maintained by defendants (and likewise by the President of the United States of America, acting through the Director General of Railroads, during that part of the period of Federal control preceding said 25th day of June, 1918), for the transportation of deciduous fruits in carloads from said points in the State of California to said points in other states designated as groups A, B, C, D, E, F, G, H, and J, was $1.15 per hundred pounds, subject to a minimum carload weight of 26,000 pounds;

[fol. 179] That, effective upon said 25th day of June, 1918, the President of the United States of America, acting through the then appointed and acting Director General of Railroads, increased said rate from $1.15 per hundred pounds to $1.44 per hundred pounds, subject to a minimum carload weight of 26,000 pounds; that said rate of $1.44 per hundred pounds thereafter remained in force and effect until the 26th day of August, 1920;

That, effective upon the 26th day of August, 1920, defendants increased said rate to said points in other states designated as groups A, B, C, D, E, F, G and H, from $1.44 per hundred pounds to $1.92 per hundred pounds, subject to a minimum carload weight of 26,000 pounds; that said rate of $1.92 per hundred pounds thereafter remained in force and effect until the first day of January, 1922; that further, effective upon said 26th day of August, 1920, defendants increased said rate to said points in other states designated as group J, from $1.44 per hundred pounds to $1.80 per hundred pounds, subject to a minimum carload weight of 26,000 pounds; that said rate of $1.80 per hundred pounds thereafter remained in force and effect until the first day of January, 1922;

That, effective upon the first day of January, 1922, defendants established a rate of $1.73 per hundred pounds, subject to a minimum carload weight of 26,000 pounds, for the transportation of deciduous fruits in carloads from said points in the State of California to said points in other states designated as groups A, B, C, D, E, F, G and H, [fol. 180] as hereinbefore specified; that further, effective upon said first day of January, 1922, defendants established a rate of $1.62 per hundred pounds, subject to a minimum carload weight of 26,000 pounds, for the transportation of deciduous fruits in carloads from said points in the State of California to said points in other states designated as group J, as hereinbefore specified; that effective upon the 18th day of November, 1922, defendants established a rate of $1.73 per hundred pounds, subject to a minimum carload weight of 26,000 pounds, for the transportation of deciduous fruits in carloads from said points in the State of California to said points in other states designated as groups K, L and M, as hereinbefore specified; that said rate of $1.73 per hundred pounds to points in groups A, B, C, D, E, F, G and H, and said rate of $1.62 per hundred pounds to points in said group J, have been maintained and enforced by defendants continuously since said first day of January, 1922, and said rate of $1.73 per hundred pounds to points in said groups K, L and M has been maintained and enforced by defendants continuously since said 18th day of November, 1922, and such rates are, and each of them is, now in full force and effect; that said rates are published in and by items Nos. 1510-A and 1520-A in Supplement No. 12 to the said Trans-Continental Freight Bureau East-Bound Tariff No. 3-T, I. C. C. No. 1164, hereinbefore referred to.

[fol. 181] V

That during the period extending from 1913 to 1926, both inclusive, the volume of shipments of such deciduous fruit, from points in the State of California to points in other states of the United States, has enormously increased; that in the calendar year 1913 such shipments amounted to 13,332 carloads, in the calendar year 1925 to 86,543 carloads, and in the calendar year 1926 to 80,000 carloads, approxi-

mately; that the average loading per car has increased from approximately 26,000 pounds in 1918 and prior thereto to approximately 29,000 pounds in 1926, and the average revenue per car has increased during the same period from approximately $300 to approximately $500 or an increase of 66-2/3%; that by reason of such large increase in the volume of shipments of deciduous fruits from points in the state of California to points in other states of the United States, and by reason of such large increase in the average loading and in the average revenue per car, complainant's members and other shippers of deciduous fruits from the State of California are of right entitled to the establishment and maintenance of materially lower rates for the transportation of their shipments than the rates now maintained and enforced by defendants; that notwithstanding such large increase in the volume of such shipments and in said average loading and revenue per car, said rate of $1.73 per hundred pounds now maintained and enforced by defendants for the transportation of such deciduous fruits from points in the State of California to points in other [fol. 182] states designated as Groups A, B, C, D, E, F, G and H, exceeds the rate in effect upon June 24, 1918, by 50.4%, and said rate of $1.62 per hundred pounds now maintained and enforced by defendants from points in the State of California to points in other states designated as Group J exceeds the rate in effect upon June 24, 1918, by 40.8%; that such rates so increased and now maintained and enforced are, and each of them is, unjust and unreasonable, in violation of the provisions of the Interstate Commerce Act as amended, and in particular of Section 1 thereof, and of the joint resolution of Congress (S. J. Res. 107) approved January 30, 1925, and commonly known and referred to as the Hoch-Smith Resolution.

VI

That defendants have, subsequently to the said 26th day of August, 1920, and subsequently to the said first day of January, 1922, substantially reduced the rates maintained and enforced by them for the transportation of a large number of commodities other than deciduous fruits, which commodities are transported by defendants in large volume

over their lines of railroad, and that many of such rates as so reduced exceed the rates maintained and enforced for the transportation of such commodities prior to June 25, 1918, by percentages materially lower than 50.4% or 40.8%; that by reason thereof complainant's members and other shippers of deciduous fruits from said points in the State of California to said points in other states are required to pay rates for the transportation of their traffic [fol. 183] which are disproportionately high, and which furnish an undue and unjust proportion of the revenues of defendants; that complainant's members and such other shippers of deciduous fruits, and their traffic, are thereby subjected to rates which are relatively unreasonable, and are likewise subjected to undue and unreasonable prejudice and disadvantage, in violation of the provisions of the Interstate Commerce Act as amended, and in particular of Sections 1 and 3 thereof, and of the joint resolution of Congress (S. J. Res. 107) approved January 30, 1925, and commonly known and referred to as the Hoch-Smith Resolution.

VII

That a serious depression now exists, and throughout the period of more than five years last past has existed, in the deciduous fruit industry of the State of California; that such depression has been more severe in the current year than in any prior year; that the products of said industry do not freely move in interstate commerce; that in order to promote the freedom of movement of deciduous fruits from points in the State of California to points in other states designated as Groups, A, B, C, D, E, F, G, H, J, K, L and M, it is necessary that the lowest possible lawful rates compatible with the maintenance of adequate transportation service be established and maintained, and that such rates be placed upon a just and reasonable basis with relation to other rates.

That neither the rate now maintained and enforced by defendants for the transportation of deciduous fruits from [fol. 184] points in the State of California to points in other states designated as Groups A, B, C, D, E, F, G, H, K, L and M, to-wit: $1.73 per hundred pounds, nor the rate now maintained and enforced by defendants for the trans-

portation of deciduous fruits from points in the State of California to points in other states designated as Group J, to-wit: $1.62 per hundred pounds, is the lowest possible lawful rate compatible with the maintenance of adequate transportation service, but that, on the contrary, each of said rates is greatly in excess of such lowest possible lawful rate, and that neither of said rates is upon a just or reasonable basis with relation to other rates.

VIII

That, by reason of the facts stated in the foregoing paragraphs, complainant's members and other shippers of deciduous fruits have been and are subjected to the payment of rates for the transportation of deciduous fruits from points in the State of California to points in other states which were and are (1) unjust and unreasonable, in violation of Section 1 of the Interstate Commerce Act as amended, and and (2) unduly and unreasonably prejudicial, in violation of Section 3 of said Act, and (3) higher than the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and upon an unjust and unreasonable basis with relation to other rates, in violation of the joint resolution of Congress (S. J. Res. 107) commonly known and designated as the Hoch-Smith Resolution.

That a just, reasonable, non-prejudicial and lawful rate [fol. 185] for the transportation of deciduous fruits in carloads from said points in the State of California to said points in other states designated as Groups A, B, C, D, E, F, G, H, K, L, and M, should not exceed $1.44 per hundred pounds.

That a just, reasonable, non-prejudicial and lawful rate for the transportation of deciduous fruits in carloads from said points in the State of California to said points in other states designated as Group J, should not exceed $1.44 per hundred pounds.

IX

That on the 12th day of March, 1925, pursuant to the said joint resolution of Congress, approved January 30th, 1925 (S. J. Res. 107), known as the Hoch-Smith Resolution,

the Commission entered its order instituting an investigation of the rate structure of common carriers subject to the Interstate Commerce Act; that the investigation so instituted is designated by said order as "No. 17,000—Rate Structure Investigation"; that complainant hereby refers to said order and prays that the same may be deemed to be a part hereof with the same effect as if specifically set forth herein.

That on July 14th, 1926, the Commission made a report and order in the proceeding so instituted and likewise in the proceeding entitled "Ex Parte 87—Revenues in Western District," such report and order being published in Volume 113, Interstate Commerce Commission Reports, at page 3 thereof; that in the course of its said report the Commission said at page 36 thereof:

[fol. 186] "Pending further progress in the investigation of the issues under No. 17,000, parties are not debarred from what may prove to be the more expeditious and satisfactory course of presenting their grievances by complaint or of seeking the reconsideration of our former determinations which may control the situation."

That by reason of the acute economic depression existing in the deciduous fruit industry in the State of California and the urgent need for relief therefor, complainant brings this complaint at this time to the end that relief my expeditiously be afforded, in pursuance of said resolution and in conformity with the orders of the Commission in relation to the said investigation.

X

That the nature and importance of the issues presented by this complaint justify and require a departure from the "Proposed Report" procedure authorized by the Commission's Rules of Practice, and that final submission and disposition of said issues be accomplished at the earliest practicable date; that to this end it is desirable and necessary that a hearing be granted and held before a Commissioner and that, following such hearing, oral argument be permitted before the entire Commission, all as soon as may be consonant with the Commission's convenience.

Wherefore complainant prays that defendants may be severally required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendants, and each of them, to cease and desist [fol. 187] from the aforesaid violations of said Act and of said Resolution, and to establish and put in force and apply in the future to the transportation of fresh deciduous fruits, other than apples, between the points of origin and points of destination specified in paragraph IV hereof, in lieu of the rates named in said paragraph and now maintained and enforced by defendants, a rate which shall not exceed $1.44 per hundred pounds, or such other rate or rates as the Commission may deem reasonable and just and not unduly or unreasonably prejudicial, and such as will promote freedom of movement of said fruits at the lowest possible lawful rates compatible with the maintenance of adequate transportation service and will be upon a just and reasonable basis with relation to other rates;

That, in order that this cause may be speedily determined, this complaint be set for hearing before a Commissioner and that, following such hearing, oral argument be granted before the entire Commission at the earliest practicable date and without the intervention of a Proposed Report;

And that such other and further order or orders be made as the Commission may consider proper in the premises.

Dated at San Francisco, California, December 20, 1926.

California Growers' and Shippers' Protective League, by H. M. Remington, 85 Second Street, San Francisco, California, General Manager. Al- [fol. 188] lan P. Matthew, John O. Moran, McCutchen, Olney, Mannon & Greene, Balfour Building, San Francisco, California, Its Attorneys.

[fol. 189] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 19130

PETITION FOR LEAVE TO INTERVENE

Comes now your petitioner, State of New York, Department of Agriculture and Markets, and respectfully repre-

sents that it has an interest in the matters in controversy in the above entitled proceeding, and desires to intervene in and become a party to said proceding, and for grounds of the proposed intervention says:

1. That the Department of Agriculture and Markets is a governmental department of the State of New York, cooperating with and aiding the farmers of the State in the distribution and marketing of agricultural products, with offices at Albany, New York.

That the department of Agriculture and Markets, under Article 2, Sub. 11, Chapter 48, of the New York State Laws of 1922, as amended, is charged with the duty of obtaining fair and reasonable and non-discriminatory rates for the transportation of agricultural products of New York State.

2. That the farmers and orchardists of New York State produce and ship large quantities of deciduous fruits, other than apples, which are transported in interstate commerce to markets included in Transcontinental Groups A, B, C, D and E, as referred to in the complaint of the above named [fol. 190] complaint. That in the marketing of said deciduous fruits, particularly grapes, pears and peaches, producers located in New York State are in active competition with California shippers.

3. That there now exists, and has for a period of more than five years existed a serious depression in the deciduous fruit industry in New York State.

4. That the rates applying to the interstate transportation of deciduous fruits from points in New York State were increased contemporaneously with the rates in issue in this proceeding, and in an equal or greater degree. That New York State producers are now faced with the loss to California producers of their natural markets, and that any reduction which might be made in the rates in issue would greatly aggravate the seriousness of this situation.

Wherefore said Department of Agriculture and Markets prays leave to intervene and be treated as a party hereto, with right to have notice of and appear at taking of testimony, produce and cross-examine witnesses, and be heard

in person or by counsel upon brief and oral argument, if oral argument is granted.

State of New York, Department of Agriculture and Markets. Berne A. Pyrke, Commissioner, by T. M. Parshall, Traffic Director.

Dated at Albany, New York, February 11, 1927.

[fol. 191] At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 17th Day of February, A. D. 1927

No. 19130

Order Permitting Intervention

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of State of New York, Department of Agriculture and Markets:

It is ordered that the said State of New York, Department of Agriculture and Markets be, and it is hereby permitted to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervenor to introduce evidence which will unduly broaden the issues raised in the complaint;

It is further ordered that a copy of the intervening petition be served upon complainant and defendants; and that a copy of this order be served upon each of the parties to this case.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 192] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 19130

PETITION FOR LEAVE TO INTERVENE

Comes now the Railroad Commission of the State of California and respectfully petitions the Honorable Interstate Commerce Commission for leave to intervene in the above entitled proceeding, and as grounds of proposed intervention respectfully shows:

I

Intervener is the duly constituted and acting authority of the State of California for the regulation of transportation companies therein, including the rates charged by such tranportation companies in the State of California under and pursuant to the provisions of the Constitution of the State of California, Article XII, Sections 20, 21, 22, 23 and 23 (a), and of the Public Utilities Act of the State of California, Statutes of 1915, page 115, California State Laws.

Section 34 of the Public Utilities Act reads as follows:

"The Commission shall have the power to investigate all existing or proposed interstate rates, fares, tolls, charges and classifications, and all rules and practices in relation thereto, for or in relation to the transportation of persons or property or the transmission of messages or conversa-[fol. 193] tions, where any act in relation thereto shall take place within this state; and when the same are, in the opinion of the commission, excessive or discriminatory or in violation of the act of congress entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and the acts amendatory thereof and supplemental thereto, or of any other act of congress, or in conflict with the rulings, orders or regulations of the interstate commerce commission, the commission may apply by petition or otherwise to the interstate commerce commission or to any court of competent jurisdiction for relief."

During a period of several years last past, extending from 1913 to 1926, both inclusive, the shipments of deciduous fruits from points in the State of California to points

in other states of the United States have enormously increased, and we are reliably informed that there has been an increase from a total of approximately 14,000 cars, in the year 1913, to an estimated total of approximately 80,000 cars in the year 1926, and that by reason of this large increase in the volume of shipments of deciduous fruits the rates should be investigated and placed upon a lower basis.

II

That the rates maintained by the defendants in the above entitled proceeding for the transportation of fresh deciduous fruits from points in the State of California to points in other states of the United States, as specified in the complaint in said proceeding, are (1) unjust and unreasonable, in violation of Section 1 of the Act to Regulate Commerce, as amended, and (2) unduly and unreasonably prejudicial, in violation of Section 3 of said Act. That under and pur- [fol. 194] suant to the so-called Hoch-Smith Resolution (S. J. Res. 107, approved January 30, 1925) these rates should be investigated by the Interstate Commerce Commission in order to ascertain whether this basic agricultural industry should be given relief in the form of a reduction in rates by reason of the serious economic condition of this industry. That petitioner desires to join with the complainant in said proceeding in seeking the reduction of such rates as prayed for in the complaint therein.

Wherefore said Railroad Commission of the State of California, pursuant to the authority vested in it by the provisions of the Constitution of the State of California and of the Public Utilities Act prays leave to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel

upon brief and at the oral argument, if oral argument is granted.

Railroad Commission of the State of California, by Ezra W. Decoto, President, State Building, San Francisco, California. Carl I. Wheat, Arthur T. George, Reginald L. Vaughan, Attorneys for Railroad Commission of the State of California, State Building, San Francisco, California.

[fol. 196] *Duly sworn to by Ezra W. Wecoto. Jurat omitted in printing.*

[fol. 196] At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 24th Day of February, A. D. 1927.

No. 19130

Order Permitting Intervention

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of Railroad Commission of the State of California:

It is ordered that the said Railroad Commission of the State of California be, and it is hereby, permitted to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervenor to introduce evidence which will unduly broaden the issues raised in the complaint:

It is further ordered that a copy of the intervening petition be served upon complainant and defendants; and that a copy of this order be served upon each of the parties to this case.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 197] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 19130

PETITION FOR INTERVENTION

Comes now the Arkansas Railroad Commission, offices in the State Capitol Building, Little Rock, Ark., Arkansas Packing Corporation, offices at Fayetteville, Ark., and the Ozark Fruit Growers Association, offices at Monette, Mo., petitioners, and beg leave to intervene in the above entitled case and for cause state:

I

That the Arkansas Railroad Commission, Arkansas Packing Corporation and the Ozark Fruit Growers Association represent the growers and shippers of deciduous fruit from Arkansas and Missouri to destinations involved in the above entitled complaint.

II

That the Complainant in this case is seeking a reduction in its rates on deciduous fruits (except apples) from shipping points in California to points in other states designated as Groups A, B, C, D, E, F, G, H, J, K, L, and M and further identified in paragraph III in complainants' petition. A large part of this destination territory is where your petitioners herein now market and desire to market their products. The reductions sought, if granted, will make lower rates from California on deciduous fruit than on the same kind of fruits from Arkansas to part of the territory involved, thus jeopardizing the interests of growers and shippers of deciduous fruits in Arkansas, if, and [fol. 198] unless, a similar reduction is made from Arkansas to the territories aforesaid.

Wherefore your petitioners pray leave to intervene and to be made party to said case, with right to introduce exhibits and offer evidence, examine and cross-examine witnesses, be represented at any future hearings of the matters

herein involved, file briefs and participate in oral argument, if oral argument be granted.

Respectfully submitted.

Arkansas Packing Corporation, Ozark Fruit Growers Association, by W. A. Cain, Traffic Manager. Arkansas Railroad Commission, by Grady Hays, Secretary.

Dated Little Rock, Ark., March 16th, 1927.

[fol. 199] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 19130

PETITION OF CALIFORNIA FRUIT EXCHANGE FOR LEAVE TO INTERVENE

Comes now your petitioner, the California Fruit Exchange, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I

That petitioner is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office in the City of Sacramento, California.

II

That petitioner is engaged in the cooperative shipment, distribution and marketing of deciduous fruits produced in the State of California and is so engaged in the shipment, distribution and marketing of such fruits for and on behalf of a large number of growers in the State of California.

III

Petitioner hereby refers to paragraphs II, III, IV, V, VI, VII, VIII, IX and X of the complaint in the above entitled

proceeding and prays that the allegations of said paragraphs may be deemed to be incorporated in this petition with the same force and effect as if specifically set forth herein.

Wherefore the said California Fruit Exchange prays [fol. 200] leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted; that after due hearing and investigation an order be made commanding said defendants and each of them to cease and desist from the aforesaid violations of said Act and of said Hoch-Smith Resolution, and to establish and put in force and apply in the future to the transportation of fresh deciduous fruits, other than apples, between the points of origin and points of destination specified in paragraph IV of said complaint, in lieu of the rates named in said paragraph and now maintained and enforced by defendants, a rate which shall not exceed $1.44 per hundred pounds, or such other rate or rates as the Commission may deem reasonable and just and not unduly or unreasonably prejudicial, and such as will promote freedom of movement of said fruits at the lowest possible lawful rates compatible with the maintenance of adequate transportation service and will be upon a just and reasonable basis with relation to other rates.

And that such other and further order or orders be made as the Commission may consider proper in the premises.

California Fruit Exchange, by J. L. Nagle, General Manager, Sacramento, California.

Dated at Sacramento, California, March 19, 1927.

[fol. 201] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 19130

PETITION FOR LEAVE TO INTERVENE

Comes now your petitioner, Commonwealth of Pennsylvania, Department of Agriculture, and respectfully repre-

sents that it has an interest in the matter in controversy in the above entitled proceeding, and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

1. That the Department of Agriculture is a governmental department of the Commonwealth of Pennsylvania cooperating with and aiding the farmers of the State in the distribution and marketing of agricultural products, with offices at Harrisburg, Pennsylvania.

That the Department of Agriculture under authority of Sections 1501 and 1504 of an Act of the General Assembly of Pennsylvania, approved June 7, 1923, is charged with the duty of obtaining fair and reasonable and non-discriminatory rates for the transportation of agricultural products of Pennsylvania.

2. That the farmers and orchardists of Pennsylvania produce and ship large quantities of deciduous fruits, other than apples, which are transported in interstate commerce to markets included in Transcontinental Groups A, B, C, D and E, as referred to in the complaint of the above-named complainant. That in the marketing of said deciduous fruits, particularly grapes, produces located in Pennsylvania are in active competition with California shippers.

3. That there now exists, and has for a period of more than five years existed a serious depression in the grape [fol. 202] industry in Pennsylvania.

4. That the rates applying to the interstate transportation of deciduous fruits from points in Pennsylvania were increased contemporaneously with the rates in issue in this proceeding, and in an equal or greater degree. That Pennsylvania producers are now faced with the loss to California producers of their natural markets, and that any reduction which might be made in the rates in issue would greatly aggravate the seriousness of this situation.

Wherefore said Department of Agriculture prays leave to intervene and be treated as a party hereto, with right to have notice of and appear at taking of testimony, produce and cross-examine witnesses, and be heard in per-

son or by counsel upon brief and oral argument, if oral argument is granted.

Commonwealth of Pennsylvania, Department of Agriculture. (Signed) C. G. Jordan, Secretary of Agriculture.

Dated at Harrisburg, Pennsylvania, March 8, 1927.

[fol. 203] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 19130

[Title omitted]

PETITION OF INTERVENTION

Comes now your petitioner, the Board of Railroad Commissioners of the State of South Dakota and respectfully represents that it has an interest in the matters in controversy in the above styled proceeding and desires to intervene in and become a party to said proceeding and for grounds of proposed intervention alleges:

I

That petitioner is an administrative body exercising certain powers of the Government of said State and is charged with the duty, under the laws of said State and the provisions of Section 13, Paragraph 2 of the Interstate Commerce Act, to appear for users, dealers and shippers of [fol. 204] traffic moving in interstate commerce in proceedings before the Interstate Commerce Commission; that petitioner files this intervening petition for and on behalf of the users, receivers and dealers in fresh deciduous fruits other than apples, within the State of South Dakota; that John J. Murphy, Dawes E. Brisbine and John W. Raish are each a duly elected, qualified and acting railroad commissioner of said State and collectively constitute the Board of Railroad Commissioners thereof.

II

That the defendant railroad companies are engaged in the transportation of "deciduous fruits," as defined by paragraph III of complainant's complaint, from origin territory in the State of California to destinations in the State of South Dakota, and as such common carriers are subject to the provisions of the Interstate Commerce Act.

III

That the rates applying to the transportation of "deciduous fruits" from origin points in the State of California named in complainant's complaint to destination within the State of South Dakota are excessive and unreasonable and in violation of Section 1 of the Interstate Commerce Act.

Wherefore petitioner prays leave to intervene in and to be treated as a party hereto, with right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in person or by counsel upon brief and at the oral argument, if oral argument is [fol. 205] granted.

Board of Railroad Commissioners of the State of South Dakota. John J. Murphy, Dawes E. Brisbine, John W. Raish, Commissioners. D. L. Kelley, Rate Expert. Raymond L. Dillman, Assistant Attorney General, Pierre, South Dakota.

Dated at Pierre, South Dakota this 14th day of March, 1927.

[fol. 206] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 19130

PETITION FOR LEAVE TO INTERVENE

Comes now your petitioner, California Farm Bureau Federation, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That petitioner California Farm Bureau Federation, whose post office address and principal place of business is 103 Hilgard Hall, Berkeley, California, is a voluntary, unincorporated, non-profit association of 43 county Farm Bureaus, in the State of California, composed of approximately 25,000 growers of agricultural products in the State of California.

II. That as such growers, petitioner's membership originates a tremendous tonnage of deciduous fruits of various kinds which must, for marketing purposes under present circumstances, be transported by the defendants herein to eastern consuming centers in the United States; that the net farm price received by petitioner's grower members for the various deciduous fruits produced by them and shipped to eastern markets is largely controlled by the cost of trans- [fol. 207] portation to said eastern markets; that your petitioner, therefore, on behalf of its membership, is vitally interested in the volume of the freight rates applicable to the movement of said deciduous fruits to said eastern markets.

III. That your petitioner refers to the allegations contained in the complaint herein tnd hereby adopts and incorporates the same herein, the same as if here set forth in full.

Wherefore said California Farm Bureau Federation, prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross examine witnesses, and be heard in person or by counsel upon brief and at the oral arguments, if oral argument is granted.

California Farm Bureau Federation, by Alex Johnson, Its Secretary, 103 Hilgard Hall, Berkeley, California. Edson Abel, Attorney for Petitioner, 802 Balboa Bldg., San Francisco, California.

Dated at San Francisco, California, March 21, 1927.

[fol. 208] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR LEAVE TO INTERVENE

Your Petitioner, State Department of Agriculture of the State of Michigan by Hon. William W. Potter, Attorney General of the State of Michigan, respectfully represents that it has an interest in the matter in controversy in the above entitled proceeding, and desires to interevene in and become a party to said proceeding, and for the grounds of the proposed intervention says:

1. That the State Department of Agriculture of the State of Michigan was created to encourage Agriculture in the State of Michigan including the growing of fruits;

2. That the average annual value of the grape crop in the State of Michigan during the past five years was $3,428,000; that Michigan ranks third among the States of the Union, in the production of grapes;

3. That the State of Michigan ranks fifth in the production of pears; the average production for the past ten years being 842,000 bushels per annum with an average value of $918,000;

4. That Michigan is deeply interested in the marketing of its fruits and securing the best prices obtainable for the same, and is therefore, interested in any modification of freight rates on fruits such as are grown in Michigan.

Your petitioner, therefore, prays leave to intervene and be treated as a party hereto, with right to have notice of and appear at taking of testimony, produce and cross examine witnesses, and be heard in person or by counsel upon brief and oral argument, if oral argument is granted.

State Department of Agriculture of the State of Michigan, by Herbert E. Powell, Commissioner of Agriculture, Lansing, Michigan. William W. Potter, Attorney General of the State of Michigan, Lansing, Michigan.

[fol. 209] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER OF DEFENDANT CHICAGO AND NORTH WESTERN RAILWAY COMPANY

Comes now the defendant, Chicago and North Western Railway Company, and for answer to the complaint of complainant:

I

Admits that it is a common carrier engaged in the transportation of property between points in the United States, and as such common carrier is subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and the acts amendatory thereof or supplementary thereto.

II

Refers to the applicable tariffs for a correct statement of the charges referred to or complained of herein.

III

Denies that anything done or omitted by defendant with respect to the subject matter of said complaint is in violation of the law, and that defendant should be subjected to any adverse order; and denies that the complainant is entitled to the relief prayed, or any relief.

IV

Each and every other allegation in said complaint not hereinbefore admitted is hereby specifically denied.

Wherefore, having fully answered, this defendant prays [fol. 210] that the complaint may be dismissed.

P. F. Gault, Attorney for Defendant Chicago and North Western Railway Company.

Chicago, January 24, 1927.

NOTE RE OTHER ANSWERS

All of the other defendants named in the complaint before said Interstate Commerce Commission in said proceeding answered the said complaint in a form substantially identical with the answer of defendant Chicago and North Western Railway Company.

[fol. 211] **Condensed Statement of Evidence Before Interstate Commerce Commission**

In Docket No. 19130

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY et al.

This proceeding came on for hearing before Examiner E. L. Beach on March 21 and the hearing thereof was continued thereafter from day to day until completed on March 31, 1927.

At said hearing the Interstate Commerce Commission permitted the filing of each of the petitions in intervention hereinbefore set out in full. Of said petitions in intervention, those of the following parties were on behalf of complainant: Board of Railroad Commissioners of the State of South Dakota, California Farm Bureau Federation, California Fruit Exchange, Railroad Commission of the State of California, Arkansas Railroad Commission, Ozark Fruit Growers Association and Arkansas Packing Corporation. Of said petitions, those of the following parties were on behalf of defendants: State of New York, Department of Agriculture; Commonwealth of Pennsylvania, Department of Agriculture; and State Department of Agriculture of the State of Michigan.

[fol. 212] FRANK H. BUCK was called as a witness on behalf of the complainant and, having been duly sworn, testified as follows:

I am the President of the California Growers' and Shippers' Protective League and have been since its organization in 1921. The California Growers' and Shippers' Protective League is a voluntary non-profit organization composed of a majority of the companies engaged in marketing and, as far as tonnage is concerned, shipping deciduous fruit outside of the State of California. Generally speaking, the purpose of this organization is to promote the interests of the deciduous fruit industry throughout California.

Thereupon, the complainant offered and there was admitted in evidence, complainant's Exhibit No. 1, consisting of a list of members of the California Growers' and Shippers' Protective League and a copy of its By-Laws and said Exhibit No. 1 is in the following form:

"COMPLAINANT'S EXHIBIT No. 1

List of Members and Copy of By-Laws California Growers' and Shippers' Protective League

List of Memebers

American Fruit Growers, Inc.
Ashley Fruit & Land Company.
Frank H. Buck Company.
California Deciduous Fruit Companies:
James F. Elliot.
B. B. Green.
Newcastle Fruit Company.
Penryn Fruit Company.
Placer County Mountain Fruit Co.
[fol. 213] The Silva-Bergtholdt Company.
United Fruit Company of California.
California Pear Growers Association.
W. O. Davies.
Earl Fruit Company.
F. B. McKevitt Company.
Pacific Fruit Exchange.
Pioneer Fruit Company.
Stewart Fruit Company.
Tracy Waldron Fruit Company
Vacaville Fruit Company.
Charles E. Virden.

By-Laws of the California Growers' and Shippers' Protective League

Article I

The name of this Association shall be California Growers' and Shippers' Protective League, and its principal office shall be located at San Francisco, California.

Article II

This Association is a voluntary association organized for the welfare of the deciduous fruit industry of California, but not organized for pecuniary profit. It has no capital stock, nor shall it make or declare dividends.

Article III

The objects of this Association are:

First. To protect the interests of growers and shippers by securing just and equitable freight rates on deciduous fruit shipments.

Second. To protect the deciduous fruit industry against all unjust discriminations and exactions on the part of carriers.

Third. To promote the general benefit and upbuilding of the deciduous fruit industry."

I have been in charge of the Frank H. Buck Company since 1916. Prior to that time I was an officer of this company and in charge of the operation of one of its [fol. 214] ranches near Vacaville. I have been more or less connected with the fruit business all my life.

Frank H. Buck Company is a corporation, engaged in managing real properties practically all of which are fruit orchards and vineyards.

It owns land and in addition leases other ranches and handles fruit of other growers on commission. It is engaged solely in the deciduous fruit business. The principal fruit orchards of the company are near Vacaville and Lodi, California. They also operate properties in Fresno County, Tulare County, Colusa County, Yuba County and have

shipping stations elsewhere in the State of California. The Frank H. Buck Company operates packing houses where growers bring fruit for packing. It also receives fruit packed by growers and acts as agent of the grower, marketing the fruit throughout the United States, either by shipping it to auctions or making delivered sales or private contracts. Frank H. Buck Company charges seven per cent (7%) of the gross sale price as its commission for the sale of fruit for other growers. If the fruit is sold f. o. b. California the Frank H. Buck Company charges ten per cent (10%) of the San Francisco invoice value. In the course of distribution Frank H. Buck Company keeps in touch with all markets throughout the country, and with the cars by telegraph, and attends to diversions of fruit from point to point in the East. Out of the commission charged by the Frank H. Buck Company on sales of fruit by auction in the East it absorbs all commissions charged by the auction companies.

Potentially there is a very large area in California lying generally along the foothill communities and in some of [fol. 215] the interior, particularly adapted to the growing of deciduous fruits. The Auburn-New Castle-Penryn territory is perculiarly adapted to the growing of deciduous fruits and the fruit is of high quality. This territory is not adapted to any other form of agriculture due to the nature of the soil. The Vacaville-Winters section of California is where deciduous fruit growing commenced in California.

There has been a very definite change from grain farming carried on in the early history of California to more extensive fruit culture throughout the state as a whole. The growing of wheat has generally given place to the growing of fruit. The deciduous fruit industry in California is the most important individual agriculture interest in the state oday. Taken in connection with perishable vegetables it is certainly the most important. Our eastern shipments of deciduous fruit and vegetables run well over two hundred thousand (200,000) cars a year, of which the deciduous fruit industry contributes approximately eighty thousand (80,000). The commercial importance of the deciduous fruit industry is not confined to shipments of fresh fruit to market but includes a large part of the

fruit, particularly peaches and pears, which go either to canneries or dried fruit packing houses. The deciduous fruit industry also furnishes to the carriers a large tonnage in box-shook amounting to something like seventy-five hundred (7500) cars a year. In addition the deciduous fruit industry furnishes to the carriers approximately eight hundred (800) cars per year of bracing lumber. It also furnishes to the carriers a large tonnage of paper and nails and the growers furnish to the carriers additional [fol. 216] tonnage of insecticides, spraying materials, farm implements and cultivating materials.

In the year 1914 prices of deciduous fruits started out very high but as a result of the war there was a depression in the California deciduous fruit industry in 1914 and 1915. In 1916 the sales of deciduous fruit picked up and the next three years could be characterized as prosperous. From that time until 1921 the California grower of deciduous fruits was prosperous. The war-time prices were reflected in the deciduous fruit industry. In November 1923 and in all years since there has been a depression which has been unfavorable to the farmer. This depression has been substantially continuous since 1922. The year 1926 has been a very disastrous year for nearly all forms of fruit except apricots. The growers of apricots, by reason of local demand, have made a profit. The growers of plums have never made a profit under an condition, and I do not think, speaking as a whole, that the other growers of deciduous fruit and grapes have even done more than break even at the best.

The banks have taken over more properties in the last three or four years than any other time in history. In a great many cases they are not foreclosing but are simply taking the properties and operating them. Growers owe us more money now than they did in 1923, approximately Twenty-five Thousand Dollars ($25,000) more. We have paid taxes for over one-half of the growers on their properties this last December. It is quite a common thing for them to come to the fruit companies and obtain advances both in April and December for the purpose of meeting their taxes.

Since the depression in 1920 commenced, the trend of [fol. 217] land values in the deciduous fruit districts has

been downward. I know of no evidence of improvement in those land values. There are no material sales of orchards or vineyards, except foreclosure sales at bargain prices.

The Frank H. Buck Company operated in 1924 thrity-[fol. 218] two ranches; of these eleven show a profit and twenty-one a loss. In 1925 some of the leases ran out and we did not renew them. In that year we operated twenty-nine properties of which twenty-one showed a loss and only eight showed a profit. In the last year out of thirty properties seven showed a profit and twenty-three showed a loss and the sum of the loss exceeds the profits. All of these ranches are fruit ranches located in what are considered good sections of the country. I do not anticipate any improvement in the market prices received by the growers for their fruit. There has been a slight reduction since the last year in the price of shook; otherwise I don't see any reduction in the cost of materials, and I doubt if the reduction on the price of shook will continue.

In 1926 more fruit was canned than ever before and there was a heavy carry over of these commodities. This will probably lower the price on these commodities. There was also a substantial carry over of dried fruit packed and prices in dried fruit are not improving.

There is a wonderful production of fruit in California now and great potential possibilities, but the local population is not large enough to take care of the production and in my opinion we cannot sell over ten per cent (10%) of what we produce, locally. There is, therefore, the question of distributing fruit and all possible use has been made of canneries and dried fruit packers for this purpose and there still remains a huge tonnage that must be moved or consumed or sent East. The fruit, because of its perishable nature, will not stand water transportation, except in rare instances on certain varieties. We must bring our fruit to the markets for we have no local market here. Our principal markets are East of the Missouri River. If you mean by freedom of movement of California deciduous fruits [fol. 219] that the movement is continuous and unhalted by an interim, I would say that there is not freedom of movement of deciduous fruits from California to transcontinental territories at the present time. There is no

question in my mind but that the present shipments to the East are distinctly halted.

In 1925 and the beginning of 1926 twenty-five thousand (25,000) cars of grapes were left unshipped and there was a definite reduction of the shipments this year entirely. Between five thousand and six thousand cars of grapes were left unharvested in 1925. There was a large quantity of grapes unharvested in 1926. The quality of the fruit produced in 1926 was the best in years.

No effort has been made to curtail harvesting with a view to limiting the distribution. Action has been taken to curtail picking on Saturday and Sunday, resulting in the curtailment of shipments, but this was an effort to correct the market as a whole and not to limit distribution of anything particularly.

The producer bears the burden of freight and refrigeration costs on transcontinental freight. When a sale is made f. o. b. California the buyer pays the freight but the price is fixed by taking into consideration what the price would be at the auction point and the f. o. b. price is fixed by deducting the freight from that.

The reduction proposed in this proceeding would substantially benefit the deciduous fruit growers of this state because the freight reduction will save Five and 80/100 Dollars ($5.80) per ton and in some instances that saving would be the difference between profit and loss. In my opinion this reduction, if made, will promote the shipment [fol. 220] of California deciduous fruit.

During the period preceding 1917 all deciduous tree fruits were loaded to the minimum of twenty-six thousand pounds per car.

During the last five years the average load of grapes shipped in lugs is in excess of thirty-one thousand pounds and believe that this loading will continue in the future.

The complainant has consented to an increase in the carload minimum weight to thirty thousand pounds in connection with grapes. That is limited to grapes because all who have had experience in shipping tree fruit believe that it will not stand a higher minimum. The grape tonnage at the present time far exceeds the tonnage of the tree fruits. In the event that the car load minimum on

grapes is advanced to thirty thousand pounds, the average load of all deciduous fruits including grapes will exceed thirty thousand pounds, because the grapes will be loaded, and are now loaded, even beyond that.

It is of vital importance to the deciduous fruit industry that the rate reduction be made effective at an early date. I believe that the coming year will be even more critical to the industry than last year, owing to the lack of demand locally.

[fol. 221] Cross examination:

The condition of the deciduous fruit industry in California has been getting worse year by year since 1922, except that the condition of the deciduous fruit growers was a little better in 1924 than 1923 due to the fact that the crop was shorter in that year. Generally speaking, the cause of the condition of the industry growing worse was that prices were falling. The prices were falling due to a general readjustment of what we call the pre-war level that is taking place in the markets in the East. Prices dropped in the year 1926 principally because Eastern people were unwilling to pay the same prices which they were willing to pay 5 or 6 years ago.

Approximately 85% of the grapes consumed in Eastern markets originate in California.

The grape shipments to transcontinental destinations have increased year by year since 1921, up to and including 1926. These increased shipments have had an effect upon the market, that is to lower the prices. This was one of the reasons why in 1926 we endeavored to curtail the number of shipments, but the main reason was to spread the shipments over the period of the harvest.

I think that a reduction in freight rates would produce freedom of movement, or a greater freedom of movement than at present, and that freedom of movement would not cause a reduction in prices. There would be an increase in consumption because there would be more fruit shipped and it would probably be consumed. We have never had any difficulty about the consumption of fruit. There is no hope of a reduction in the price of box shook.

In 1924 our loss on the Arcampo Ranch was $6,372.80. That represents the loss of the operation of the ranch and

[fol. 222] over all varieties of fruit whether they went East, were shipped fresh or were dried. When I speak of a loss or profit on any ranch I make no segregation as to the different operations; I simply give the net result of the operation. Furthermore, interest on investment, depreciation and taxes are not included. The increased depression in the deciduous fruit industry of California is attributable to the freight rate to the extent that the freight rate has not been changed in the face of changing conditions of consumption in the East.

The present depressed condition of the deciduous fruit industry is due to dropping prices and that the fact that money is not being spent to buy more grapes, and that the tonnages have increased, although consumption has increased proportionately with it. Some of the markets have been overcrowded, but our distribution on the whole is good. There is hardly a town of any size in the country that is not supplied with California fruits. We have made an effort to increase the marketing facilities of California fruit shippers. We have a wider distribution than in 1921. There is always room for improvement in any kind of business. We hope for improvement in marketing facilities for 1927 as compared with 1926, but I do not believe that our distributing system is deficient at the present time. We have had very good marketing organizations for California deciduous fruits. It is possible that markets were from time to time over-supplied; I think they were.

[fol. 223] The marketing organizations are practically helpless in attempting to control prices because during recent years most of the decidious fruit has been sold at open auctions in the large cities, where the buyers come and bid, and they cannot be forced to bid for it except where they can put it into public consumption. Ever since 1922 there has been a more marked tendency on the part of buyers to hold back and get fruit at lower prices. The auction price fixes the price of all sales.

If we got a reduction on our freight rate of $5.80 a ton, and the buyers at auction decided to pay $10 less a ton, we would not be as well off as we are now, but I think that we can hold the prices up around their pre-war level, if we get a reduction in freight rates. We have held the rates up in the past as far as we could, but haven't succeeded.

The real trouble is that we are too far away from the markets, and, on the present rate basis, we cannot pay the rates and compete with other growers throughout the United States. With respect to grapes we have competition directly from New York state, in Michigan, in the Ozark regions, and in Ohio.

There is competition in the shipment of peaches from Georgia, Colorado, Arkansas, Oklahoma, Washington, Oregon, Utah, New York, New Jersey, North Carolina, Delaware, Michigan and probably three or four more states. We have competition in pears from New York, Washington, Oregon, Colorado and Texas. In apricots we have very little competition, if any. Our competition in cherries comes from Oregon, Washington and Idaho; but practically all of the cherries move by express. In plums we have competition from Idaho, Oregon and Washington.

If the deciduous fruit growers of California obtained a [fol. 224] lowering of the freight rates, Arkansas would, probably, be entitled to a corresponding reduction, but I am not a rate expert. If both of these rates were reduced, California growers would be in a better position than at present, in so far as competition is concerned. Neither New York, Michigan or Arkansas grapes compete strongly with California grapes because they are used for different purposes.

Seventy per cent of the deciduous fruits handled in the year 1926 were on delivered price basis, and thirty per cent on the f.o.b. California basis.

Most of the cars of deciduous fruits leaving California are diverted prior to reaching their original destination. A small percentage of them are delivered directly to markets without being rebilled to intermediate markets. There is no additional charge for this service on the part of the railroads west of Chicago. That is an advantage to the California shipper.

I would like to see the blanket rates continued because it gives us a wider opportunity for distribution without taking into consideration the question of different freight rates to destinations.

The average haul on California grapes moving to points in Group J and East would land somewhere between Chicago and New York. This is not true of peaches, however,

practically all of which are marketed west of Chicago, but the average haul of all deciduous fruits would be to some place east of Chicago.

Generally speaking, the plum industry is in very bad shape and I do not think that we can continue to ship on the present basis of transportation.

We have severe competition with a number of states on peaches, but between eighty-seven and ninety per cent of California's peach production is sold locally either dried [fol. 225] or in canneries. We have very little competition on our grapes, and even if all of the grapes from other districts were entirely removed from the market, it would not necessarily mean that we were going to make money on our California grapes, although if all competition on peaches were removed, we would more than likely make some money.

I am firmly convinced that a reduction in the freight rates on grapes will be the biggest step toward securing prosperity for the growers that can be taken.

Since 1923 we have lowered our production costs twenty per cent, which I think is typical of other growers in California.

The eastern buyer at the auction markets does not take into consideration the freight rate in bidding at all. As a result, the grower would be entirely at the mercy of the eastern auction buyer, if the fruit went directly to the auction without the intermediary, but the intermediary endeavors to control the distribution as far as possible. The supply of deciduous fruit cannot be controlled.

Redirect examination:

In the year 1924 the Frank H. Buck Company sustained a net loss of approximately $33,000; in 1925—a net loss of approximately $26,000; in 1926—a profit of $400.

The reduction by the Interstate Commerce Commission of the carload express rate on cherries from California in 1924 was not followed by a decline in the market price of cherries in the Eastern markets. The cherry market has been a little higher during the last few years. I believe that the movement of cherries in 1926 was greater than in 1925.

[fol. 226] Since the freight rate reduction in 1923, the orange industry has been in very prosperous condition, and it has had an increase in prices, with about 33⅓% more return to the growers. There has been an increase in the production of oranges in California.

The freight rate as a factor does not enter into the price of grapes, if the buyer purchases the same for juice purposes; but, if he is buying them on the market the freight rate is the biggest factor, because he calculates how they may be resold and the price he can procure for them.

It is not practicable, in my opinion, for the growers of deciduous fruits in the State of California to exercise any very definite control over the eastern market prices. The industry is not sufficiently restricted in the volume of its production and in the diversification of the particular producing areas to admit of a close control over the marketing of the fruit. The best that can be done is to exchange information and knowledge of where all the shipping concerns are going to route their cars. These efforts are now being made.

The citrus production is more localized than that of the deciduous fruit. It is easier to control the distribution of citrus fruit at this end. The citrus products are not as perishable as the deciduous fruit and can be held back for marketing longer than the deciduous fruit.

A reduction in the freight rate would enable us to market deciduous fruits in cities other than those which we can reach under the $1.73 rate. We are now selling in nearly every important market throughout the country, but I think that we could increase our tonnage in a great many cities east of Chicago and at other points where we have no auction facilities or private markets.

[fol. 227] Richard L. Adams was thereupon called as a witness in behalf of the Complainant, and having been duly sworn, testified as follows:

I am connected with the College of Agriculture, University of California, and the State Department of Agriculture, State of California. I am in charge of farm management at the University of California. I have been connected with the College of Agriculture since March 1, 1914.

I have been connected with the State Department of Agriculture since June 1st of last year. I have studied agriculture for four years, taking the degree of bachelor of science in the Massachusetts Agricultural College; I have taken the degree of bachelor of science at the Boston University, and master of science at the University of California, all in agriculture.

I am familiar with the deciduous fruit industry in California, and with the economic conditions which obtain therein.

From the standpoint of total value of products, the deciduous fruit industry stands first among the agricultural enterprises of California. From the standpoint of acreage, the field crops occupy the major acreage. I think that the measure must be by gross income of acreage, and from the standpoint of gross income, the deciduous fruits are very important to the agriculture in this state.

During the last thirty years there has been a definite trend in the sections suitable for fruit raising, at least in many of them, from the growing of particular grains and general field crops to deciduous fruits and sub-tropical fruits.

Between 1890 and 1920, deciduous fruits increased 250 per cent; sub-tropical fruits increased 725 per cent; nuts increased 350 per cent, and vegetables increased 250 per [fol. 228] cent. Vegetables, as reflected in acreage, have increased from 236,500 acres in 1924 to 324,020 acres in 1926.

The trend is definitely away from grain farming and toward the fruit and vegetable industry.

California does not grow any surplus wheat at the present time. Wheat is imported to the state, and the grain industry is constantly becoming less important. The deciduous fruits are becoming more important in the general agricultural scheme.

There are various fruit growing sections of the state in which the soil is peculiarly favorable to the growing of fruits and not to the growing of grains. This is true generally in the foothills. If the fruit culture were not a success in the foothill sections, in all probability these hills would go back to brush. There are areas in the San Joaquin and Sacramento Valleys peculiarly favorable to grow-

ing grapes. This is due to the rising of the water table increasing the alkali, which is unfavorable to grain growing, but renders grape growing possible. These areas are large and increasing in extent.

The grain growing in California cannot compete with grain growing in the middle west upon any even basis.

At the present time the deciduous fruit industry in California is in bad financial straits. This is shown by increased mortgages, difficulty in meeting taxes, reduction in the size of net income, loss of farms, and all the usual business evidences that follow a depression in any industry. There has been very little transfer of orchard property during the last three or four years.

Due to the increase in acreage, partly brought about by the increase in population, the tonnage in fresh fruit and vegetables has gone away beyond the ability of the California markets to absorb and utilize this product, and, as far [fol. 229] as we can determine, not over five per cent of the total production in California is consumed locally. As a result, ninety-five per cent of all production has got to seek other markets.

The Pacific Coast States contain less than ten per cent of the population of the United States.

The growers must look for markets in the territory east of the Missouri River, to market their products.

I think that it is in the interest of the natural and proper development of the country as a whole, that this industry on the Pacific Coast be fostered and encouraged, just as the particular enterprises of any section should be preserved and fostered within economic justification. I have met with many deciduous fruit growers in the State of California, and have found them to be of high caliber.

It is economically preferable that the present planted acreage be conserved to the end that there may be a wider distribution of California fruits, rather than that our present planted acreage be curtailed to the end that prices which are higher might be obtained for such fruits as will be produced and marketed. This is true because, in the first place, a man thoroughly trained in a given line cannot easily move from one enterprise to another and, in the second place, to uproot some enterprise that now may be economically sound and move the competition from that enter-

prise into another may create the same difficulty in the second enterprise that now exists in the first. Furthermore, it takes from five to twelve years to bring an orchard into bearing. It would certainly be an economic waste to pull out orchards. And, lastly, there is perhaps this trouble, the draining of productive investments and the danger of growing difficulties in other enterprises in order to save the first.

County Farm Advisors are the connecting link between the College of Agriculture and the actual farmer. The [fol. 230] County must go on record as wanting a farm advisor. When this is done the University sends a man. There are 38 county farm advisors in our 55 counties. That means that there is a farm advisor in perhaps all but three or four of the important agricultural counties.

The general trend of the value of agricultural land not only in California, but in the United States as a whole, has been downward for the last several years.

Ever since August 1, 1918, there has been an increase in the production of grapes in California. Excluding 1926, there has been a gradual increase in the shipment of grapes from California transcontinentally.

There was a reduction from 75,899 cars in 1925 to 64,100 in 1926, but in 1926 there was somewhat heavier loading.

[fol. 231] FRANK T. SWETT was thereupon called as a witness in behalf of complainants and, having been duly sworn, testified as follows:

I reside in Berkeley. I have an orchard in Contra Costa County, upon which cherries, prunes, plums, apricots, pears, and grapes are grown. I have been engaged as a fruit grower for forty years. I am President and Manager of the California Pear Growers Association. I have been President of it for ten years. It is a cooperative association of about 1,300 growers, organized for the purpose of selling the pears of its members to canneries, and to promote the prosperity of the industry as a whole. We do not ship any pears east. This is done through other organizations. The California Pear Growers Association is a non-profit organization. I

am also director of the California Growers Protective League, and have been since its organization.

In the foothill section of Placer County in California there is grown a variety of tree fruit and grapes for eastern shipment. Further down the Sacramento River large quantities of pears and some plums are grown for eastern shipment. In the San Joaquin Valley they grow table grapes and wine grapes as well. In the Sonoma County district, some pears and large quantities of juice grapes are grown for eastern shipment. In Contra Costa County, a large variety of fruit is grown. In the Santa Clara Valley, many winter pears are grown for eastern shipment, together with apricots.

In Southern California there is very little deciduous fruit grown.

I have been in touch with the conditions in the California [fol. 232] deciduous fruit industry during my whole life, and at the present time there is a condition of depression in the deciduous fruit industry for eastern shipment. This is evidenced by the difficulty of securing loans from banks, the decrease in value of the grower's equity in his orchard or vineyard, the considerable number of foreclosures, and the growing habit of the grower to borrow all he can get.

Thereupon there was offered and admitted in evidence Complainant's Exhibit Number 2, which is in the following form:

[fol. 233] COMPLAINANT'S EXHIBIT No. 2

Witness: Swett

INTERSTATE COMMERCE COMMISSION

Docket No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY et al.

Chart Showing Relative Percentages of Decline and Partial Recovery, Years 1919 to 1926, Inclusive, in Farm Values, Dollars per Acre, of California Deciduous Fruits

(Apricots, Cherries, Grapes, Peaches, Pears, Plums, Prunes, Raisins), Fresh and Dried (California Department of Agriculture Crop Reports), vs. Ten Principal Field Crops of United States (U. S. Dept. of Agriculture Year Books)

Farm Value represents: On Deciduous Fruits (fresh and dried) sold locally, the price received upon local delivery at producing point; on Deciduous Fruits sold in Eastern Markets, the price realized at shipping point, after deducting Transportation, Refrigeration, Selling, Loading and Packing Costs; on United States Field Crops, the price as of December 1st of current year.

Table of Percentages Shown in This Chart

	1919	1920	1921	1922	1923	1924	1925	1926
Decid. Fruits.....	100	90	61	63	43	42	41	39
U. S. Field Crops.....	100	65	40	54	59	67	60	54

[fol. 234] (As a part of the foregoing exhibit, there was introduced a chart showing in graphic form all of the data set forth therein.)"

The pear industry occupies about one hundred thousand acres of land in California. About fifty-six thousand acres are in bearing. The production has doubled in the past eight or nine years. Last year there was produced a total of two hundred sixteen thousand tons, of which twenty-five thousand were dried, fifty thousand canned, and the balance shipped to eastern points.

During the last eight years pear growers have fared better than other growers of deciduous fruits. They have made an average acre gross income of $210, which is above the cost of production. During the last four years there have been two years when pears were below the cost of production. In 1923 and 1926 the average grower ran approximately $20 or $30 an acre behind.

During the war the freight rate of the pear grower was all right. The demand was good and prices were good. However, with the general decline of the price of general agricultural commodities and competition, the maintenance of the present freight rate might throttle increased eastern shipments during most years. It will be, just as it was the past year, one of the principal limiting factors.

Nineteen seventeen was one of the most prosperous years that California fruit growers ever had. 1918, 1919 and 1920 were prosperous and then came a slump. I think conditions in the deciduous fruit industry are worse than they have ever been at any time since 1891.

[fol. 235] Cross-examination:

I would not say that the lack of a proper marketing organization for California deciduous fruits is at all responsible for the present condition of the industry. I am not familiar with the juice grape business, but as to all other deciduous fruits, I think that we have very efficient marketing agencies. The volume of production can never be controlled by any organization. You cannot do the same thing with deciduous fruits as you can with citrus fruits. The Fruit Growers Exchange of Southern California can send out word to the growers to hold their oranges on the trees for a week or two weeks longer. With the exception of winter pears, of which there are perhaps 1,500 carloads, the other deciduous fruits must move when they are ready to move. You cannot control the movement and cannot prevent the fruit from bunching up to any extent.

More orchards are at present coming into bearing in California. Referring to pears, the increase amounts from nine to eleven per cent per year. It may double for the next ten years. This presents a more difficult problem because we have to get a broader distribution in order to market them. We must make every effort to reach the ultimate consumer at a reasonable price, so that we can attract his attention and get him to buy.

One difficulty about the 1926 crop was the freight rate. With a lower freight rate, we would have been able to move more to the consumer. Another reason for the poor prices on the 1926 crop was a heavy production in Georgia, and the other fruits turned into the markets simultaneously with ours, and competitive conditions were very severe. This was one of the series of causes, and probably the major cause.

[fol. 236] The pear growers have met the price situation better than others, because it is an attractive fruit, because close to forty or fifty thousand dollars a year has been ex-

pended in advertising, and the attention of the consumers called to the quality of the fruit.

The condition of the industry is partly due to the falling off of consumers and the increase of production. This is one of the causes but increase of production does not necessarily mean bankruptcy for the producer. It is true that production of deciduous fruit is exceeding the present consumption of the various markets available.

[fol. 237] GEORGE MCCAULAY was thereupon called as a witness on behalf of the complainant and, being duly sworn, testified as follows:

I reside at Auburn, Placer County, California, and have resided there for over twenty years. I am in the banking business with the Placer County Bank at Auburn. The fruit growers in Placer County bank largely with this bank and I come into personal contact with them in such manner as to become acquainted with their financial condition. Up until 1922 they were in good financial condition. Since then they have been slipping a little each year. They are in pretty bad shape now, very bad shape.

The fruit crop in that section in 1926 was the best we ever had in quality.

Some of the growers during the last year have changed from lenders to borrowers. In years gone by in the fall of the year, after the fruit season, many of them would purchase bonds or stocks. This year we only had one do so and then for a small amount and this buyer purchased less than he had for many years previous. Now most of those who used to buy securities borrow from us. They are in bad shape. They have had to borrow to pay taxes. This is the first year that we had to make loans to growers to pay the first instalment of taxes which is in November. For four or five years we have loaned them money to pay taxes.

We were forced this year to make arrangements with Sacramento bankers to advance approximately $300,000 for fruit houses in financial difficulties in that section. This is unusual. We have had to get assistance for the last two or three years, but more this year.

Quite a few could not pay their interest this year or for [fol. 238] 1926. There is financial difficulty among the business houses of Newcastle and Auburn. Businessmen have borrowed a great deal more this year than for a long time. They state that they had too much on their books, that fruit growers can't pay their bills.

There is no sale at all now of orchard or vineyard property in that section. The value of orchard or vineyard property in this section has sunk fifty per cent in the last seven or eight years. It is impossible to get tenants any more. This is the hardest year they have had for getting tenants.

Every year for the last forty years the growing of fruit has increased in this section. For the last two or three years there has not been much new planting, because the growers think they can't make enough to buy new trees.

Cross-examination:

The peak value of deciduous fruit orchards in our vicinity was in about 1920. In 1913 the value was about $500. an acre. It increased to $700. or $800. in 1920. There are many now offered for around $400. an acre. The depreciation which I have described began about 1922. I attribute a great deal of the slipping to the railroad rates. The year 1926 was the worst of all. I do not know that it would be safe to say that the present value is anything, but I know that there is no one looking for ranches.

Of the other industries in Placer County, some are prosperous and some are not.

The growers are now up to the point where they cannot borrow any more.

[fol. 239] J. E. Bergtholdt was thereupon called as a witness for complainant and, having been duly sworn, testified as follows:

I reside in Newcastle, Placer County, California. I am a fruit grower and fruit shipper, and in the nursery business and have been engaged in those businesses for twenty-seven years continuously. Our acreage in deciduous fruit ranches in Placer County amounts to 1,600 acres. We grow

in equal quantities plums, peaches and pears, with some cherries. and a few apples, apricots and quinces. Peaches, pears and plums are the principal fruits produced in this district. Ninety-five per cent of our products are shipped east and have been for many years. The total acreage of deciduous fruits in Placer County is approximately 27,000 acres. A little over five thousand car-loads were shipped east in this district in 1926. That is the maximum shipment, except 1923.

This has been an important industry in Placer County since 1871, and is one of the oldest fruit growing sections in the state. It is considered the best quality of fruit leaving the state.

Up to 1915 there hadn't been much variation from year to year in economic conditions in this section. Between 1916 and 1920 business became more prosperous. 1921 was also good. Beginning with 1922 our values began falling off and our costs remained at a maximum. While our prices have gone down, our costs have remained at a standard maximum. The falling off was so marked in 1924 that the net result of our operations was not up to the average of the twenty years preceding 1915. 1925 was not quite as good as 1924. In 1926 the fruit orchardists of Placer [fol. 240] County for the first time did not make any income, but sustained a loss. I would estimate the loss of the district between thirty-five to forty dollars an acre, or approximately a million dollars.

Thereupon there was offered and admitted in evidence complainant's Exhibit 3.

This exhibit consisted of a statement showing the cost, production and profit or loss, not including interest on investment or depreciation, for three years on all of the 440 acres of full bearing orchards of Silva-Bergtholdt Company. This exhibit showed that in 1924, three out of ten ranches showed a net loss and the total of all operations showed a net profit of $10,805.43, total expenses amounting to $78,495.19 and total fruit sales being $89,300.62; it showed that in 1925, one out of ten ranches showed a net loss and the total of all operations showed a net profit of $17,962.78, total expenses amounting to $98,935.70 and total fruit sales being $116,898.48; and this exhibit showed that in 1926, six

out of ten ranches showed a net loss and the total of all operations showed a net profit of $42.58, total expenses amounting to $98,868.12 and total fruit sales being $98,910.70.

Prior to the war our orchards had a fixed cash rental value. These orchards have no fixed cash rental value today. There is no sale of orchards that I am aware of. Since 1921 there has been a downward trend in land values, particularly at the end of the 1926 season.

There are no sales that would disclose the present values. If you were forced to sell under present conditions I do not believe you could realize pre-war values. The minimum cost of reproducing these properties at the present time under present conditions would be not less than $700 an acre. [fol. 241] This is based upon the average value of raw land at from $50 to $100 an acre and there is added thereto the various costs involved to produce paying orchards.

Cross-examination:

I attribute the inability to make as much money in 1926 as previous thereto to lower prices. These lower prices are due to competitive conditions, which was the main factor. The other factor was our continued maximum cost of production.

Since 1900 the production of deciduous fruits in Placer County has increased so that the production in 1900 was 40% of this year's production.

We have a lot of competition on peaches, but our chief difficulty with our deciduous fruit lies in the fact that we are so far from the market and it costs so much money to get it to the market.

The charge for transporting a box of peaches, plums or pears from Newcastle to New York or Chicago is equal to or greater than our entire labor cost of production.

Redirect examination:

The figures of profits shown in Complainant's Exhibit No. 3 are not profits of the Silva-Bergtholdt Company, but simply show the net margin between the cost of operation and the returns from the ranches. The Company sustained

losses on many of the ranches which it operated upon a cash rental basis.

The express rate reduction on cherries did not hurt the prices and it decreased our cost of doing business.

[fol. 242] WILLARD D. ELLIS was thereupon called as a witness on behalf of the complainant and, having been duly sworn, testified as follows:

I reside at Berkley, California. I am President of the Federal Land Bank of Berkley and the Federal Intermediate Credit Bank of Berkeley. The Federal Land Bank of Berkeley serves the territory covered by California, Nevada, Arizona and Utah. The Federal Intermediate Credit Bank of Berkeley makes loans direct to cooperative loan associations secured by warehouse receipts covering staple agricultural products, and also readjustments for banking corporations and loan companies. The Federal Intermediate Credit Bank serves substantially the same territory as the Federal Land Bank of Berkeley. I have been connected with these banks practically since their organization. Prior to that time I had eight years experience in a national bank.

The Federal Land Bank of Berkeley serves approximately 9,000 farmers in California. We have between eight and nine thousand loans outstanding. These loans indeciduous fruit growing sections are scattered all over the state. We have twenty-six million loaned in California at present, one-half of which would be in the deciduous fruit districts.

We appraise farms for loan purposes and base the appraisals upon the earning capacity of the land. I am familiar with the economic conditions which now obtain in the fruit growing sections.

There have been recent failures in banks in the San Joaquin Valley which I believe are directly traceable to conditions in the fruit districts. One bank failed at Delano, which is a deciduous fruit district; two at Dinuba and one at [fol. 243] Merced.

In the Lodi district we are getting more applications for loans than we have for four or five years. We have had increased demands for loans during the last year. We

have had a number of bankers call on us, asking if we could take loans in their districts to relieve them. I think that the banks are beginning to realize that the land banks are better places for the farmer to obtain his money than the local banks, on account of the more or less frozen condition of the real estate loans. We have received more inquiries in the past year than previously from the Stockton area and from Sonoma and Napa counties. This is due to the fact that banks want to get themselves in liquid condition.

We have appraisers who are in touch with land values in deciduous fruit growing areas. Since 1922 there has been a downward trend in the values reported by these appraisers of orchard and vineyard property. There has been no improvement in land values in the last year. There is no extensive sale of orchard or vineyard properties and no apparent demand or inquiry for them.

On our total loans in California we had, on April 30, 1926, $53,704.18 on delinquent taxes. On March 15th of this year there was still delinquent and unpaid $37,158.98. These last figures represent a carry-over from the preceding years.

Within the past three years our bank has been called upon to quite a considerable extent to take over loans from the country banks because of the frozen condition of the country banks. In 1926, alone, the Federal Land Bank of Berkeley loaned nearly $5,000,000 in California, the greater part of which was in the deciduous fruit sections; that represents largely relief to the local banks.

[fol. 244] WILMER SIEG was thereupon called as a witness for the complainant and, having been duly sworn, testified as follows:

I live at San Francisco, California. I am Manager of the California Fruit Distributors. This is an organization for collective marketing of California deciduous fruits, and is a non-profit organization. I have been its General Sales Manager and General Manager sice 1918. I was in the business of the distribution of products in Milwaukee for about twenty years prior to coming West in 1912, and was

engaged in the distribution of apples from 1912 to 1917, at Hood River, Oregon. The California Fruit Distributors marketed about 16,000 carloads in 1926. This was deciduous fruit only. I am in constant touch with marketing conditions in the East when deciduous fruits are being distributed. I am in constant contact and familiar with the economic conditions prevailing in the California deciduous fruit industry.

Our distribution since 1921, with the possible exception of 1924, has shown a constant decrease in the net returns on all of the products that we handle. The shipment of deciduous fruits from the State was about 86,000 carloads in 1925 and about 78,000 carloads in 1926. The fruit was not securing satisfactory prices in the East in 1926. The result of the year was unsatisfactory from the financial standpoint. There has been no real recovery since the collapse of the prices of agricultural products in 1921. The principal difficulty which we have encountered is inability to obtain sufficient returns for the grower. There is a market for our fruit; we have marketed every car that has been entrusted to our care by our members. The specific [fol. 245] difficulty which we encounter is the cost of delivering the product to the buyer. I do not think there is an over-production of California deciduous fruits. I think there is a market for the fruit if we can get it to the buyer at reasonable rates on a reasonable basis. The extent to which we can market an increased production of California fruits depends on how attractive we can make the price to the buyer. I believe that the reduction sought in this proceeding would stimulate the grower and help us materially to market the products.

Cross-examination:

I believe that a reduction in rates would stimulate the energy of the growers in the matter of production, and that we could secure a more liberal distribution in the Eastern territories than we could under the present rates. I would say that fully 80 per cent of the freight reduction reflects back to the grower; 80 per cent of the tonnage is sold on a delivered basis, where the freight rate becomes part of the cost.

We have a certain tonnage which must move. If it moves, it means that we are putting it out to the consumer at a price that will bring a return to the grower. The movement cannot continue under present economic conditions.

Our organization makes its shipments on a commission basis. Our commission is seven per cent on the delivered price. Where sales are made f. o. b. Los Angeles or San Francisco, we charge ten per cent commission. This has been done ever since the organization has been formed.

There has been an increased production of deciduous fruit in the last three or four years, averaging around [fol. 246] twelve per cent per annum. Our organiation has endeavored to increase consumption of fruit in the East by opening up new markets and by moving fruit to the market for sale, rather than to insist upon purchasing f. o. b. California. We have been adding to the number of brokers employed continually. Our organization pays the brokers. The grower only pays our commission.

Our organization has never attempted to regulate the flow of fruits to Eastern markets. The flow is controlled by the growers. We take the fruit as it is offered to us. We have advised the growers that it would be wise for them not to pick grapes on Saturday, and we closed our own shipping and loading yards on Saturday and Sunday; but we did not succeed in cutting down shipments very much. I think that there is no way of preventing the individual grower from shipping his stuff to market in the event he thinks the market is going to be high. Our organization pays every cost of marketing including the brokers; the grower pays only our commission.

I suppose that there are forty to forty-five thousand growers of deciduous fruits in California.

When deciduous tree fruits mature, the fruit is going to come off the tree and it must be shipped or go into by-products. Citrus fruits can be held on the trees for a certain period so that the harvest and the shipment can be spread over a greater length of time. But when deciduous tree fruits are ripe they must be kept moving; except for the fall pears, they will not stand storage.

[fol. 247] WILSON H. THOMPSON was thereupon called as a witness for the complainant and, having been duly sworn, testified as follows:

I live at Lodi, California. I am a shipper of green fruits and own vineyard properties. I am Vice President and Manager of the Lodi District of Pacific Fruit Exchange, with which I have been identified since 1911. The Pacific Fruit Exchange is a commercial company shipping green fruits, deciduous fruits principally. In 1926 it shipped from California to the East over 4,000 cars. My vineyard property is located near Lodi. I have one wine grape vineyard and two Tokay grape vineyards. I am also Vice-President of the Lodi National Bank, of which I have been an officer for five years. I have been interested in the growing and shipping of deciduous fruits for twenty-five years.

The Lodi District is the second largest in production of deciduous fruit in the State, producing annually about 12,000 cars of grapes and a thousand cars of tree fruits. Nearly all varieties of tree fruits are grown there. In 1926 approximately 8,000 carloads of deciduous fruits were shipped from the Lodi District to the East.

Up until 1923 conditions in the Lodi District were very favorable. Since then it has been on the downward trend. The prices realized for the fruit have not been satisfactory. They made less money this year than any previous year during my experience. There is an economic depression among the growers. Growers find it difficult to borrow sufficient money to take care of their property properly. [fol. 248] There is no building going on. Many are neglecting their buildings and equipment. The tax delinquencies have been heavy for the last three years. The tax delinquencies this year have not been as great as the year before because the banks and holders of first mortgages had to pay taxes to protect their interests. The bank loans are greater than in former years, and demand for money is much greater. This year the bank with which I am connected has borrowed or rediscounted over a half million dollars. This is to meet the increased demand of growers for loans.

There is no market for orchard and vineyard properties in the Lodi District; no sales are being made. The orchard

and vineyard values have a downward trend and are selling for about one-third of what they were in 1921 and 1922. There has been a steady decline in these conditions since 1923.

The fruit was of good quality in 1926, and there was no car shortage. About one-third of our Tokay grapes remained on the vines because price conditions didn't warrant shipping them East.

The merchants in the city of Lodi have failed to collect their last year's bills in a number of cases, and are not selling as much goods as in former years. They are not paying their balances at the bank and about one-fifth of the business buildings are vacant. There are a great many foreclosures on vineyard properties.

Two of my vineyards showed a loss this year, and one showed a small profit. There was a small profit taking the three in the aggregate.

I think that the reduction sought in this case would be a benefit to the fruit growers of the State, because it would [fol. 249] assist the distribution of fruits, and would benefit the railroads in added revenues. If we could receive the amount of the reduction which is sought, that would at least pay the taxes and the interest on our investment.

Cross-examination:

I think that every effort should be made to assist the growers to maintain the present amount of fruit which they have to distribute. If we do not, many of them will uproot and, consequently, that will fall not only upon the grower, but upon the railroads as well.

By added revenues I mean that the reduction in freight rates would induce the growers not to reduce their production, and hence the present tonnage would be preserved at the new rate. I think that there will be an increase in tonnage this year over last year, but until conditions have righted themselves I would not anticipate that a reduction, as such, would lead to an increase in production in any greater percentage than the increase that has taken place over the last few years.

A vineyard does not come into maturity until about the seventh year. It begins producing in about three years,

but the tonnage is very small and the quality very poor the third year.

There has been, on the whole, a consistent increase in vineyard acreage since 1921. This increase has not been as great in the Lodi as in other districts.

It is not true that the more grapes which have been produced out of California, the lower the price received. Tokay grapes are grown only in the Lodi District and there has been but a very small increase in Tokay production over the past ten years. The price of Tokay grapes has gone down, partly due to quality, partly to the fact that people are eating other varieties of fruits and grapes. The quality has been going down since 1918 because of increased tonnage on the vines. Of the 4,000 cars shipped by the Pacific [fol. 250] Fruit Exchange from the Lodi District, about 100 cars were tree fruits and the rest grapes. About fifty per cent of the grapes were sold at Lodi to cash buyers.

If we had had the benefit of a reduction in freight rates, we could have marketed all of the grapes which were left on the vines and the grower would have received some profit. The tonnage of grapes left on the vines in the Lodi District was about the same in 1925 and 1926.

[fol. 251] George W. Day was thereupon called as a witness for the complainant and, having been duly sworn, testified as follows:

I live at Reedley, California, twenty miles southeast of Fresno, in the San Joaquin Valley. The principal industry in this territory is fruit growing and vineyards. I am General Manager of Anglo California Vineyards, Limited. This is an English corporation owning 480 acres of vineyards and orchards in the vicinity of Reedley. I have been with this company in various capacities since 1918. During that period I have been engaged in the production of grapes, peaches and oranges. We ship our table grapes to New York and obtain a somewhat higher price than the average. I have prepared a summary of the sales of table grapes in eleven auction markets, except that for 1922 only five auctions are figured.

This summary also shows production cost of Malaga grapes per acre in 1917 and 1922 to 1926, inclusive. This summary shows a net loss to the grower over the period from 1922 to 1926, inclusive.

The last sheet of the summary shows the estimated acreage of grapes in California table, wine, and raisin grapes—both bearing and non-bearing acreage.

The summary also shows tax delinquencies in Fresno County from 1919 to 1925, inclusive.

Thereupon there was offered and introduced in evidence complainant's Exhibit No. 4.

This exhibit, in substance, showed that on the sales of table grapes in eleven auction markets for the seasons 1922 [fol. 252] to 1926, inclusive, the California growers sustained a net loss of $13.07 per ton and a total loss of $8,885,247.60 The estimated loss to California growers on all table grapes for this period was shown as slightly in excess of $25,000,000. For the five year period, 1922 to 1926, inclusive, of the gross returns in these eleven auctions, 48.56 per cent was consumed by freight and refrigeration charges, commissions absorbed 7 per cent, packing 23.84 per cent and the net return to the grower was 20.58 per cent. In 1922, in five auction markets the average net loss to growers of the sales was $3.32 per ton. From 1923 onwards the following average net loss was sustained by the growers in eleven auction markets:

1923	$15.58
1924	12.60
1925	27.18
1926	16.89

This exhibit also showed that the production cost of Malaga grapes per acre, exclusive of interest on investment and depreciation, increased from $110.62 in 1917 to $143.86 in 1925, and thereupon decreased to $119.67 in 1926.

This exhibit showed that the present acreage planted to grapes in California was 680,795 acres, of which 151,593 acres were in table grapes, and that the estimated investment in table grape vineyards was $75,796,500. It also showed that tax delinquencies in Fresno County between the year 1919 and 1925 were as follows:

[fol. 253] Tax year	No.	Amount
1919	774	.....
1920	1,155	.....
1921	1,244	.....
1922	1,838	$176,568.63
1923	3,730	450,000.00 approx.
1924	3,471	390,000.00 approx.
1925	2,997	269,079.77

The operation of our properties has not been profitable during the last four or five years. We have had no profits whatever.

The situation with reference to economic conditions prevailing in fruit growing sections in the San Joaquin Valley is far from satisfactory. There have been many sales for delinquency of water taxes. Ranchers have been losing their places, not only by way of mortgage foreclosures, but abandonment of contracts and the falling of properties into the hands of private owners. During the last three years the table grape situation has been as bad, if not worse, than the raisin industry condition. There is no demand for vineyard or orchard property at present. There is no market value for either vineyard or orchard property so far as I know.

In 1925 a considerable tonnage of grapes was left on the vines in the San Joaquin Valley. In 1926 the fruit was of good quality and there was no car shortage.

In 1917 the cost of freight and refrigeration was approximately 30 per cent of the gross. In 1925 it had increased to 54.36 per cent and in 1926 it was 50.19 per cent. It was, therefore, a considerable factor in the question of marketing table grapes.

In my opinion, the table grape industry is unable to bear the burden of the present transcontinental freight rate. It is obvious from the 1925 and 1926 showing of

[fol. 254] Complainant's Exhibit No. 4 that the net returns to the growers are so far below the cost of production as to practically eliminate him from business, if continued. The reduction sought in this proceeding would benefit the industry. The present reduction would not solve the whole problem, but it is impossible to produce table grapes for less than $30 a ton, and we cannot expect to receive more than $95 to $100 per ton. There is very little possibility of making any reduction in the present seven per cent commission charge and the tendency of packing charges is to increase rather than decrease. The remaining item, of course, is freight and refrigeration.

Cross examination:

The present average rate per day for laborers in California, without board, varies from $3.40 to $3.50 for a ten hour day. The prewar wage of 1917 was $2.67 per day of ten hours, without board.

I do not think that the difficulty in the industry is overproduction. We have a sum of money invested in vineyards in California which we cannot afford to talk about wiping out. We must find a way of marketing them in such manner that we shall do it without working a hardship on the growers. The thing to do is to find a market and sell the grapes.

[fol. 255] A. W. Hendrick was thereupon called as a witness for the complainant and, having been duly sworn, testified as follows:

I live in Berkeley, California. I am Vice-President of the Bank of Italy National Trust & Savings Association, and Manager of the Central Mortgage Loan Department. I am Vice-President of the California Joint Stock Land Bank. Bank of Italy has approximately two hundred and seventy-five branches in the State of California and is the largest banking institution in the State. Its activities are

more widespread throughout the State than any other bank. The Bank of Italy has probably between sixteen and twenty thousand farm loans in the State of California. It lends money extensively in the deciduous fruit growing areas. My function in the Bank is to supervise the loans made in various branches, and to supervise as far as possible the general operation of those farms where we find the farmer in trouble.

The California Joint Stock Land Bank is a corporation authorized to make loans in the State. It operates in California and Oregon. I am in contact with the conditions prevailing in the deciduous fruit growing areas in California.

There has been in the past four years a condition in the farming industry in California such that the farmer has not been making much of an income over his costs. He is just about getting by. In the deciduous fruit industry the growers are finding it very difficult to make a profit.

[fol. 256] In the last four years there have been very few sales of farm land. During the last three or four years loans have not been paid off as in former years. It has been necessary for the banks to assist the fruit growers in practically all districts. With respect to the farmer who gets money on the bare security of his land and must liquidate his loan out of his net income, we have found it necessary in a great many instances to stand by him in the relation of partner. We have an investment to practically the same amount of money that he has. We feel that it is our duty to keep his property in cultivation and production. We very often take the position that we will pay the living expenses of the farmer and his family and take all of his crop. He is actually working for us on what we consider to be a living wage. Such a condition has never arisen in this state before. It was necessary to become really the father of some of these people and help them along in their work.

I have never for a moment thought that a proper solution of the difficulties of the fruit growers of California

can be found in curtailment of production. In the first place, I do not see how you are going to estimate the production of the crop in any one year. And I do not know how we would go about trying to curtail production.

I think that I can safely say, from my observations of conditions today, that this state, in the last four years, has not been able to demonstrate to any bank that there is a safe margin of profit in handling these fruits.

Cross examination:

There has been during the last three or four years a general depression in the farming industry, most of which, [fol. 257] however, was felt in the deciduous fruit industry.

The farmer is absolutely unprotected from the risks of his business. There is no other industry in which money is invested in this country which does not have some measure of protection against risks. The main elements which contribute to the present general depression in the farming business of California are labor, climatic and marketing conditions and freight rates.

If our country as a whole is really interested in keeping the farmer solvent, the problem must be looked at from the point of view of what can be changed. You cannot change the climatic conditions. We have an immigration law that keeps out labor; that might be changed. We have a freight rate which is considerably higher than it ought to be and which ought to be lowered. With respect to whether any improvements might be made in the marketing and distribution of the California deciduous fruit crop, I do not think that either I or anyone in the United States can answer that question. That is a problem which is larger than most of us contemplate.

If the deciduous fruit industry in this state does not get some relief, it will fast become a non-producing area.

I do not think that due to the unequaled prices prior to 1922 too many vineyards have been set out in the state.

There was a time when the railroads begged for assistance and they got it and the farmer paid the bill. The

farmer is today in exactly the same position that the railroads were then. He is asking the government of the United States and the railroads to get behind him and give him relief. The government cannot change climatic conditions, but it can change many things, among them freight rates. There ought to be a very considerable reduction in freight rates.

[fol. 258] W. P. GEARY was thereupon called as a witness on behalf of the complainant and, having been duly sworn, testified as follows:

I am rate expert and examiner of the Railroad Commission of California, with which I have been connected since 1911. I have been rate expert with it for twelve years. Prior to my connection with the Railroad Commission I was connected with the Southern Pacific and Northern Pacific and Ocean Shore Railroads. I have been in railroad work the major portion of my life.

In connection with my work for the California Railroad Commission, I have access to the reports made by the carriers under the direction of the California Railroad Commission dealing with their financial situation. These reports are made officially to the California Railroad Commission. I have made up exhibits showing the financial condition of the Southern Pacific, the Santa Fe Company and the Western Pacific.

The exhibit which has been marked for identification, "Intervenor's Exhibit No. 5" shows the operating revenues and expenses of the Southern Pacific Company between 1911 and 1926.

This exhibit shows, without giving any consideration to capitalization or increase in the properties acquired by the company, that there has been a continual increase in the net railway operating income.

I would say, taking it over the sixteen-year period, that the Southern Pacific Company has been very prosperous; their revenues have increased.

Thereupon, there was offered and introduced in evidence Intervenor's Exhibit No. 5, which is in the following form:

(Here follows Exhibit No. 5, Witness Geary, marked side folio page 259)

[fol. 260] The exhibit now shown to me marked for identification as "Intervenor's Exhibit No. 6" deals with the operations of the Atchison, Topeka & Santa Fe Railway Company. This exhibit is similar to Intervenor's Exhibit No. 5 and is self-explanatory.

This exhibit indicates to me that the Atchison, Topeka & Santa Fe Railway Company is spending more money last year than they ever did before, and shows an increase in net revenue of over Ten Millions of Dollars between 1925 and 1926.

Thereupon, there was offered and admitted in evidence, Intervenor's Exhibit No. 6, which is in the following form:

(Here follows Exhibit No. 6, Witness Geary, marked side folio page 261)

[fol. 262] The document now shown to me marked for identification as "Intervenor's Exhibit No. 7," refers to the Western Pacific Company, and it shows the same results as far as increase in net revenue goes as did Intervenor's Exhibits Nos. 5 and 6.

The railway operating net income of the Western Pacific in 1926 is the largest that it has ever secured, and the ratio of expense to revenue of this carrier has also improved.

Thereupon there was offered and admitted in evidence Intervenor's Exhibit No. 7, which is in the following form:

(Here follows Exhibit No. 7, Witness Geary, marked side folio page 263)

[fol. 264] I was connected with the Railroad Commission of California at the time of the pendency before the Interstate Commerce Commission of the proceeding known as the Express Rates, 1922, and am familiar with that pro-

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Southern

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Statement Showing Operating Revenues and

(Figures Taken from Annual Repo

S

Reporting for the year	Railway operating revenue	Railway operating expenses	Net revenue from railway operations	Railway tax accruals
1911	$91,108,761	$52,234,137	$38,874,624	C$182,044
1912	90,621,090	52,018,583	38,602,507	C193,816
1913	95,335,315	54,671,494	40,663,821	C186,523
1914	92,038,088	54,991,140	37,046,948	5,640,617
1915	97,099,099	61,652,011	35,447,088	4,635,446
1916	115,942,990	71,678,819	44,264,171	5,068,111
	For the Years 1911 to 1916, Incl., Carriers Reported for the			
1916	$121,481,981	$76,249,255	$45,232,726	$6,290,488
1917	141,653,380	90,961,279	50,692,101	9,554,152
1918	153,948,641	113,652,898	40,295,743	7,127,320
1919	169,728,931	129,448,485	40,280,446	6,815,959
1920	178,642,326	148,861,435	29,780,891	10,251,191
1921	200,652,819	151,731,342	48,921,477	12,792,305
1922	195,705,452	138,268,426	57,437,026	15,619,677
1923	217,101,263	149,112,760	67,988,503	17,030,400
1924	204,211,873	147,021,813	57,190,060	16,372,383
1925	221,897,524	160,219,517	61,678,007	17,491,436
1926	213,970,447	146,417,881	67,552,566	17,571,415
				Comparison Showin
1923	$217,101,263	$149,112,760	$67,988,503	$17,
1926	$213,970,447	$146,417,881	$67,552,566	$17,
Increase in 1926 over 1923	B $3,130,816	B $2,694,879	B $435,937	$

C Taxes of Lessor Companies not included.
A Credit Item.
B Decrease.

Freight Revenue 1923	$	148,800,132	Maintenance of Wa
Freight Revenue 1926		152,637,760	Maintenance of Wa
Increase	$	3,837,628	Increase
Passenger Revenue 1923		47,610,223	Maintenance of Eq
Passenger Revenue 1926		41,840,997	Maintenance of Eq
Decrease	$	5,769,226	Decrease

NOTE: Purpose of Exhibit, to show by years from 1911 to 1926, inclusive, the ne

[fol. 259]

"EXHIBIT No. 5

Witness: Geary

Southern Pacific Company

(Pacific System)

Statement Showing Operating Revenues and Operating Expenses for the Years 1911 to 1926, Inclusive

(Figures Taken from Annual Reports to Railroad Commission State of California)

Section "A"

Reporting for the year	Railway operating revenue	Railway operating expenses	Net revenue from railway operations	Railway tax accruals	Uncollectible railway revenue	Railway operating income	Equipment rents, debit	Joint-facility rent,—debit	Net railway operating income	Ratio of expenses to revenue (per cent)
1911	$91,108,761	$52,234,137	$38,874,624	C$182,044	None	$38,692,580	None	None	$38,692,580	57.33
1912	90,621,090	52,018,583	38,602,507	C193.816	None	38,408,691	None	None	38,408,691	57.40
1913	95,335,315	54,671,494	40,663,821	C186,523	$35,178	40,442,120	None	None	40,442,120	57.34
1914	92,038,088	54,991,140	37,046,948	5,640,617	90,711	31,315,620	A 487,650	A 71,771	31,875,041	59.75
1915	97,099,099	61,652,011	35,447,088	4,635,446	39,045	30,772,599	A 998,726	A 9,831	31,781,154	63.49
1916	115,942,990	71,678,819	44,264,171	5,068,111	19,822	39,176,237	A 519,073	218,535	39,476,775	61.82
For the Years 1911 to 1916, Incl., Carriers Reported for the Fiscal Year Ending June 30, for 1916 and Thereafter for the Calendar Year										
1916	$121,481,981	$76,249,255	$45,232,726	$6,290,488	$38,262	$38,903,976	A $572,448	$221,897	$39,254,527	62.76
1917	141,653,380	90,961,279	50,692,101	9,554,152	35,994	41,101,955	A 3,630,395	A 78,869	44,811,219	64.21
1918	153,948,641	113,652,898	40,295,743	7,127,320	41,327	33,127,096	A 694,368	A 148,989	33,970,453	73.82
1919	169,728,931	129,448,485	40,280,446	6,815,959	29,547	33,434,940	849,104	25,127	32,560,709	76.27
1920	178,642,326	148,861,435	29,780,891	10,251,191	45,552	19,484,148	1,463,045	A 477,942	18,499,045	83.32
1921	200,652,819	151,731,342	48,921,477	12,792,305	84,849	36,044,323	2,233,646	124,116	33,686,561	75.62
1922	195,705,452	138,268,426	57,437,026	15,619,677	91,281	41,726,068	1,403,305	A 136,769	40,459,532	70.65
1923	217,101,263	149,112,760	67,988,503	17,030,400	47,675	50,910,428	3,948,366	A 185,281	47,147,343	68.68
1924	204,211,873	147,021,813	57,190,060	16,372,383	83,935	40,733,742	2,284,037	A 48,007	38,497,712	71.99
1925	221,897,524	160,219,517	61,678,007	17,491,436	48,525	44,138,046	3,056,500	135,528	40,946,018	72.20
1926	213,970,447	146,417,881	67,552,566	17,571,415	45,810	49,935,341	3,019,314	298,980	46,617,047	68.4

Section "B"

Comparison Showing the Results 1926 Versus 1923

1923	$217,101,263	$149,112,760	$67,988,503	$17,030,400	$47,675	$50,910,428	$3,948,366	A $185,281	$47,147,343	68.68
1926	$213,970,447	$146,417,881	$67,552,566	$17,571,415	$45,810	$49,935,341	$3,019,314	$298,980	$46,617,047	68.4
Increase in 1926 over 1923	B $3,130,816	B $2,694,879	B $435,937	$541,015	B $1,865	B $975,087	B $929,052	B $484,261	B $530,296	

C Taxes of Lessor Companies not included.
A Credit Item.
B Decrease.

Freight Revenue 1923	$ 148,800,132	Maintenance of Way and Structures 1923	$ 27,149,922	Transportation 1923	$ 73,495,127	
Freight Revenue 1926	152,637,760	Maintenance of Way and Structures 1926	29,339,305	Transportation 1926	68,875,988	
Increase	$ 3,837,628	Increase	$ 2,189,383	Decrease	$ 4,619,139"	
Passenger Revenue 1923	47,610,223	Maintenance of Equipment 1923	36,761,930			
Passenger Revenue 1926	41,840,997	Maintenance of Equipment 1926	33,898,985			
Decrease	$ 5,769,226	Decrease	$ 1,862,945			

NOTE: Purpose of Exhibit, to show by years from 1911 to 1926, inclusive, the net railway operating income.

[fol. 261]

EXHIBIT No. 6

Witness: Geary

"The Atchison, Topeka & Santa Fe Railway Company"

Statement Showing Operating Revenues and Operating Expenses for the Years 1911 to 1926 Inclusive

(Figures Taken from Annual Reports to Railroad Commission State of California)

Section "A"

Reporting for the year	Railway operating revenue	Railway operating expenses	Net Revenue from railway operations	Railway tax accruals	Uncollectible railway revenue	Railway operating income		Equipment rents, debit	Joint—facility rents, debit	Net railway operating income	Ratio of expenses to revenue (per cent)
1911	$89,164,216	$56,637,494	$32,523,722	$2,925,996	None	$29,600,726	A	$171,224	$104,048	$29,667,802	63.52
1912	89,856,346	57,666,316	32,190,030	3,556,069	None	28,633,961	A	447,281	196,614	28,884,628	64.17
1913	98,090,754	63,830,683	34,260,071	4,067,432	None	30,192,639	A	869,927	230,983	30,831,583	65.07
1914	93,540,268	60,172,701	33,367,567	4,773,441	None	28,594,126		292,918	183,273	28,117,935	64.33
1915	97,082,745	61,384,299	35,698,446	4,748,259	20,087	30,930,100	A	520,851	260,217	31,190,734	63.23
1916	112,625,273	67,553,414	45,071,859	5,327,652	33,039	39,711,168	A	810,194	371,002	40,150,360	59.98
For the Years 1911 to 1916, Incl., Carriers Reported for the Fiscal Year Ending June 30: for 1916 and Thereafter for the Calendar Year											
1916	$121,578,879	$72,896,804	$48,682,075	$5,875,740	$23,749	$42,782,586	A	$784,537	$502,007	$43,065,116	59.96
1917	140,978,936	88,504,050	52,474,886	10,585,159	20,378	41,869,349	A	565,663	592,594	41,842,418	62.77
1918	162,369,130	114,912,375	47,456,755	6,726,927	21,492	40,708,336	A	1,411,023	561,056	41,558,303	70.77
1919	179,904,498	130,502,244	49,402,254	7,811,543	33,572	41,557,139		871,213	650,656	40,035,270	72.53
1920	178,475,780	155,078,482	23,397,298	9,783,145	19,093	13,595,060	A	1,082,426	1,025,746	13,651,740	86.89
1921	189,217,520	130,774,167	58,443,353	13,699,707	50,579	44,693,067	A	2,086,505	545,311	46,234,261	69.11
1922	191,506,229	140,356,507	51,149,722	17,035,498	52,116	34,062,108	A	1,937,822	490,920	35,509,010	73.29
1923	203,311,792	145,687,273	57,624,519	18,983,092	95,534	38,545,893	A	2,705,791	436,491	40,815,193	71.66
1924	194,174,238	141,141,872	53,032,366	16,146,590	52,256	36,833,520	A	1,965,297	449,518	38,349,299	72.69
1925	196,439,057	134,797,467	61,641,590	15,906,422	57,211	45,677,958	A	566,123	637,756	45,606,325	68.62
1926	209,337,546	134,803,586	74,533,960	18,735,885	36,901	55,761,174	A	256,771	524,245	55,493,700	64.4

Section "B"

Comparison Showing the Results 1926 Versus 1923

1923	$203,311,792	$145,687,273	$57,624,519	$18,983,092	$95,534	$38,545,893	A	$2,705,791	$436,491	$40,815,193	71.66
1926	$209,337,546	$134,803,586	$74,533,960	$18,735,885	$36,901	$55,761,174	B	$256,771	$524,245	$55,493,700	64.4
Increase in 1926 over 1923	$6,025,754	B $10,883,687	$16,909,441	B $247,207	B $58,633	$17,215,281	B	$2,449,020	$87,754	$14,678,507	

A Credit Item.
B Decrease.

Freight Revenue 1923	$ 139,655,477	Maintenance of Equipment 1923	$ 48,967,937
Freight Revenue 1926	153,778,647	Maintenance of Equipment 1926	38,356,068
Increase	$14,123,170	Decrease	$10,611,869
Passenger Revenue 1923	46,445,190		
Passenger Revenue 1926	39,278,701		
Decrease	$ 7,166,489		

NOTE: Purpose of Exhibit, to show by years from 1911 to 1926, inclusive the net railway operating income.

EXHIBIT No. 7

Witness: Geary

"The Western Pacific Railroad Company"

Statement Showing Operating Revenues and Operating Expenses for the Years 1911 to 1926 Inclusive

(Figures Taken from Annual Reports to Railroad Commission State of California)

Section "A"

Reporting for the year	Railway operating revenue	Railway operating expenses	Net revenue from railway operations	Railway tax accruals	Uncollectible railway revenue	Railway operating income	Equipment rents, debit	Joint—facility rent, debit	Net railway operating income	Ratio of expenses to revenue (per cent)
1911	NOT IN OPERATION.									
1912	$5,258,532	$4,229,864	$1,028,668	$185,234	None	$834,434	$203,495	$38,515	$611,424	80.44
1913	6,173,628	4,478,835	1,694,793	278,096	224	1,416,473	302,282	57,010	1,057,181	72.55
1914	6,099,573	4,995,892	1,103,681	379,259	None	724,422	300,959	60,445	363,018	81.90
1915	5,708,126	4,419,936	1,288,190	355,033	1,852	931,305	233,079	54,633	643,593	77.43
1916	7,466,004	4,787,892	2,678,112	349,174	1,532	2,327,406	294,359	38,155	1,994,892	64.12
For the Years 1911 to 1916, Incl., Carriers Reported for the Fiscal Year Ending June 30, for 1916 and Thereafter for the Calendar Year										
1916	$8,270,262	$4,930,622	$3,319,640	$376,459	$592	$2,942,589	$333,041	$37,229	$2,572,319	59.86
1917	9,898,483	6,190,055	3,708,428	492,297	195	3,215,936	64,682	35,023	3,116,231	62.53
1918	11,078,409	7,893,879	3,184,530	704,073	1,759	2,478,698	5,871 A	9,755	2,482,582	71.25
1919	13,657,297	9,545,286	4,112,011	595,265	1,250	3,515,496	53,493 A	84,452	3,546,455	69.89
1920	13,595,789	10,311,410	3,284,379	670,079	814	2,613,486	A 171,131	56,883	2,727,734	75.84
1921	12,104,155	10,391,343	1,712,812	1,230,981	807	481,024	A 544,372	73,503	951,893	85.85
1922	12,505,348	9,837,151	2,668,197	962,895	842	1,704,460	A 335,992	73,676	1,966,776	78.66
1923	14,138,269	10,663,912	3,474,557	951,168	1,181	2,522,208	A 560,163	68,208	3,014,163	75.42
1924	14,370,467	11,477,665	2,892,802	877,173	6,911	2,008,718	A 971,672	A 43,220	3,023,610	79.87
1925	15,569,045	11,332,942	4,236,103	979,995	1,638	3,254,470	A 870,156	A 173,874	4,296,500	72.79
1926	16,057,065	11,275,140	4,781,925	1,305,603	1,713	3,474,610	A 642,879	A 288,194	4,405,683	70.22

Section "B"

Comparison Showing the Results 1926 Versus 1923

1923	$14,138,269	$10,663,912	$3,474,557	$951,168	$1,181	$2,522,208 A	$560,163	$68,208	$3,014,163	75.42
1926	16,057,065	11,275,140	4,781,925	1,305,603	1,713	3,474,610 A	642,879 A	288,194	4,405,683	70.22
Increase in 1926 over 1923	$1,918,796	$611,228	$1,307,368	$354,435	$532	$952,402 A	$82,716 A	$356,402	$1,391,520	

A Credit Item.

Freight Revenue 1923	$ 10,513,455
Freight Revenue 1926	12,961,371
Increase	$ 2,447,916
Passenger Revenue 1923	2,424,229
Passenger Revenue 1926	1,851,027
Decrease	$ 573,202

NOTE: Purpose of Exhibit, to show by years from 1911 to 1926, inclusive the net railway operating income.

ceeding. The California Railroad Commission was very active therein. At that time the express rates covering California fruits were decreased by the Interstate Commerce Commission.

The document marked for identification as "Intervenor's Exhibit No. 8" is a comparison of increases in carload freight rates against the carload express rates on deciduous fruits (except apples) from California points to eastern destinations, from June 24, 1918, to the present time. The last two columns in this exhibit show the percentage relationship of express to freight rates.

Thereupon there was offered and admitted in evidence, Intervenor's Exhibit No. 8, which is in the following form:

[fol. 265]

EXHIBIT No. 8

Witness: Geary

Comparison of Increases

From Calif. points to:	June 24, 1918	Percentage increase over rates in effect June 24, 1918	Percentage Relshp., express to Frgt. rates June 24, 1918	Present percentage relationship, exp. to frt. rates	Present rates	Increase in cents, over rates in effect June 24, 1918
Denver, Colo.:						
Freight	$1.15	40.0			$1.62	47
Express	2.00	29.5	173.9	159.8	2.59	59
Sioux City, Iowa:						
Freight	1.15	50.4			1.73	58
Express	2.00	29.5	173.9	149.7	2.59	59
Omaha, Neb.:						
Freight	1.15	50.4			1.73	58
Express	2.00	29.5	173.9	149.7	2.59	59
Kansas City, Mo.:						
Freight	1.15	50.4	173.9	149.7	1.73	58
Express	2.00	29.5			2.59	59
St. Louis, Mo.:						
Freight	1.15	50.4			1.73	58
Express	2.50	28.4	217.4	185.5	3.21	71
Chicago, Ill.:						
Freight	1.15	50.4			1.73	58
Express	2.50	28.4	217.4	185.5	3.21	71
Cincinnati, Ohio:						
Freight	1.15	50.4			1.73	58
Express	3.00	27.6	260.8	221.4	3.83	83
Cleveland, Ohio:						
Freight	1.15	50.4			1.73	58
Express	3.00	27.6	260.8	221.4	3.83	83

Detroit, Mich.:						
Freight	1.15	50.4	260.8	221.4	1.73	58
Express	3.00	27.6			3.83	83
Pittsburg, Penn.:						
Freight	1.15	50.4	260.8	221.4	1.73	58
Express	3.00	27.6			3.83	83
Philadelphia, Pa.:						
Freight	1.15	50.4	260.8	221.4	1.73	58
Express	3.00	27.6			3.83	83
Baltimore, Md.:						
Freight	1.15	50.4	260.8	221.4	1.73	58
Express	3.00	27.6			3.83	83
[fol. 266]						
Boston, Mass.:						
Freight	1.15	50.4	260.8	221.4	1.73	58
Express	3.00	27.6			3.83	53
New York, N. Y.:						
Freight	1.15	50.4	260.8	221.4	1.73	58
Express	3.00	27.6			3.83	83

[fol. 267] The document now shown to me, and marked for identification as "Intervenor's Exhibit No. 9" is intended to show what the present freight rates would be if the rates in effect on June 24, 1918, were increased by the [fol. 268] same percentage as the express rates were increased.

Thereupon there was offered and admitted in evidence Exhibit No. 9, which is in the following form:

[fol. 268]

"INTERVENOR"– EXHIBIT No. 9

Witness: Geary

From Calif. Points	June 24, 1918	Present Rates	Increase in cents over rates in effect June 24, 1918	Percentage increase over rates in effect June 24, 1918	Volume of Frt. Rates if given same percentage increase as Exp. Rates
Denver, Colo.:					
Freight	$1.15	1.62	47	40.8	*1.49
Express	2.00	2.59	59	29.5	
Sioux City, Iowa; Omaha, Neb.; Kansas City, Mo.:					
Freight	1.15	1.73	58	50.4	
Express	2.00	2.59	59	29.5	*1.49
St. Louis, Mo.; Chicago, Ill.:					
Freight	1.15	1.73	58	50.4	
Express	2.50	3.21	71	28.4	*1.47½
Cincinnati, O.; Cleveland, O.; Detroit, Mich.; Pittsburg, Pa.; Philadelphia, Pa.; Baltimore, Md.; Boston, Mass.; New York, N. Y.:					
Freight	1.15	1.73	58	50.4	
Express	3.00	3.83	83	27.6	1.46½

* Represents actual percentage increase, but rates could not exceed the $1.46½ rate to New York.

[fol. 269] Cross-examination:

I cannot give you the aggregate value of the railway property of the Atchison, Topeka & Santa Fe Railway Company held for and used in the service of transportation in 1911. These exhibits are not offered to show what the returns on the property are or would be. It is an attempt to show the progress of operating revenue and expense. I do not doubt that there has been an increase in the investment

These figures are for the entire system, and I have no segregation to show what portion of the income was attributable to the carriage of deciduous fruits from California to trans-continental destinations. I have no idea what percentage of the net railway operating income of the Santa Fe Railway Company's system is attributable to deciduous fruit traffic moving trans-continentally from California. These exhibits are in no way offered for the purpose of proving the unreasonably low character of the deciduous fruit rates. They are simply a summary or historical review of this sixteen-year period. They are not offered to show what the carriers listed on the exhibit have earned 5.75% upon the aggregate railway property devoted to and used in transportation service.

[fol. 270] E. H. Norris was thereupon called as a witness on behalf of the complainant and, having been duly sworn, testified as follows:

I am Traffic Manager of the Stewart Fruit Company and have been since November, 1923. The Stewart Fruit Company is a fruit-shipping company, engaged in handling shipments of carload fruit from California to interstate points. It is a member of the California Growers & Shippers Portective League.

Prior to my employment by the Stewart Fruit Company I was with the Pacific Fruit Express Company, as Assistant Traffic Manager, for several years, and prior to that time, for a little over fourteen years, in other positions with this last mentioned company.

I am familiar with the service performed by carriers in the movement of deciduous fruit from California to transcontinental destinations. Starting from the origin of the movement, the cars are initially iced at icing stations the evening before, and sent out to loading stations during the night. The principal icing stations on the Southern Pacific are Roseville and Fresno; on the Western Pacific, Sacramento; on the Santa Fe, Bekersville and Fresno. Cars are spotted during the night, usually prior to 7:00 A. M. in the morning at the various loading stations and loaded during the day. Pick-up service commences around 5 P. M. and extends on to 10:00 or 11:00 o'clock at night. Cars are taken by the pick-up trains into the concentrating points which, for Northern California, on the Southern Pacific, are Roseville; on the Western Pacific, Sacramento; and for San Joaquin Valley points, Fresno for the Southern Pacific [fol. 271] and Bakersfield on the Santa Fe. Cars are again re-iced and then moved back into the trains, which are given fruit block numbers.

During the greater part of the season these fruit blocks will move in solid trains of fruit, ranging anywhere from 60 to 65 cars.

The movement of one of these fruit blocks or trains from Roseville on the Southern Pacific, to the East is as follows:

The fruit block leaves Roseville, moves over the Southern Pacific Lines to Ogden; is re-iced at several icing stations on the Southern Pacific, and re-iced at Ogden by the Pacific Fruit Express icing stations.

Southern Pacific engines take the trains into the ice dock, where they are cut off. The train is iced and then moved from the ice dock by an Ogden switch engine, after which the Union Pacific picks the train up and moves it on to Council Bluffs.

The movement from Roseville all the way to the Missouri River is entirely over the main line of the Southern Pacific and the Union Pacific, and cut-outs of cars are not very heavy due to the fact that the volume of traffic is moving to points east of the Missouri River. There are some cars moved from points west and are also some cut-outs necessary by reason of bad order or diversion on the part of shippers.

Cars going East of Missouri River are split up between three roads, principally the Chicago & Northwestern, the Illinois Central and the C. M. & St. P. Those three lines handle the preponderance of the deciduous fruit business, which is split up between them. At times the majority will be delivered to one line, and during another part of the week the majority to another line. From the Missouri River to Chicago is entirely a main line movement.

[fol. 272] On arrival at Chicago, in the case of cars destined to points east of Chicago deliveries are made to the Belt Lines, either the I. H. B. or the Belt Railway of Chicago, which lines, in turn, make deliveries to eastern connections that are to move them on to their destinations. The Erie handles practically all the New York business, on a mainline movement from Chicago.

The Pennsylvania handles the preponderance of business to Pittsburg, and a portion of the Jersey City business. That is all main-line movement.

The Michigan Central handles practically all the Detroit business, which is a main-line movement. The Baltimore & Ohio handle the majority of the Philadelphia and Washington business, which is also main line movement. That also includes Baltimore. Fruit destined for Buffalo and Boston is handled by the New York Central and the Grand Trunk Line, in connection with the Boston & Maine, which is the delivering carrier at Boston. That is all a main-line movement as well.

Santa Fe fruit blocks are made up at Bakersfield in the same manner as I have described for Roseville, and they move in fruit trains from Bakersfield to Chicago. During the height of the season the Santa Fe will, generally speaking, have full trains of fruit ranging from 60 to 65 cars which will move right through to Chicago, at least to Missouri River, except for occasional cut-outs. That is also straight main line movement on that railroad.

The handling east of Chicago substantially is the same with respect to the Santa Fe fruit as I have described with reference to fruit originated by the Southern Pacific [fol. 273] Company.

Western Pacific Fruit is blocked at Sacramento, that being their concentration point, and moves in train loads from there to Salt Lake City. The Western Pacific, however, is

not in the same position with respect to the volume of tonnage as the other lines. I do not believe they are able during a good part of the season, to make up full train loads of 60 cars.

After arrival at Salt Lake City the majority of their shipments are moved over the D. & R. G. to Pueblo, thence Missouri Pacific to Kansas City, C. & A. to Chicago. All of that movement is main line movement.

The movement east is similar to that already described for the shipments from Southern Pacific and Santa Fe points.

There is a very small quantity of fruit moving over the line of the Los Angeles & Salt Lake Railroad, from California.

I have named the lines which are principally concerned in the handling of deciduous fruit from California to transcontinental territory. Of course there is movement by numerous other railroads at times. There is movement over probably the majority of the larger lines of the country, but the big majority of the deciduous fruit business moves via the main lines that I have described, and possibly two or three others, to main line points. There is no great quantity moved to branch line points.

It finds its way to the larger markets and is there distributed to the smaller markets.

[fol. 274] The deciduous fruit movement from California commences in June, and will extend on into November, at times, as late as early December. It is a continuous movement, gradually increasing from the middle of June up until the middle of August, when it gets to its peak; and there is a big movement through September and October, with a subsequent decline until the early part of December.

[fol. 275] I have prepared an exhibit showing the fruit train schedules from California to Chicago and New York in 1917 and 1926, respectively. This exhibit shows the schedule in effect in 1917 and 1926 for the four major lines in California. The schedule shown for the year 1917 was in effect for quite some time prior thereto, and may be fairly regarded as the pre-war schedule.

Thereupon there was offered and admitted in evidence Complainant's Exhibit No. 10, which is in the following form:

[fol. 276]

EXHIBIT No. 10

Witness: Norris

"Statement of Changes in Fruit Train Schedules from California to Chicago and New York, 1917 to 1926, Inclusive

	From California to Chicago	From Chicago to New York	From California to New York	
			From territory described in note below	From all other points in California
Southern Pacific (1917) (From Roseville	138 Hours	3rd Morning	9th Morning	10th Morning
Southern Pacific (1926) (From Roseville)	154 Hours	4th Morning	11th Morning	12th Morning
Western Pacific (1917) (From Sacramento)	138 Hours	3rd Morning	9th Morning	10th Morning
Western Pacific (1926) (From Sacramento)	154 Hours	4th Morning	11th Morning	12th Morning
L. A. & S. L. (1917) (From Colton)	152 Hours, 15 Min.	3rd Morning	10th Morning	11th Morning
L. A. & S. L. (1926) (From Colton)	154 Hours	4th Morning	11th Morning	12th Morning
Santa Fe (1917) (From Bakersfield)	130 Hours	3rd Morning	9th Morning	10th Morning
Santa Fe (1926) (From Bakersfield)	154 Hours	4th Morning	11th Morning	12th Morning

Note.—California territory above indicated may be described as follows:

Southern Pacific Company:

Stockton to Sacramento (not including Stockton) and Roseville. (Includes Armbrust to Sacramento and intermediate points; also Armbrust to Roseville and intermediate points.)

Cordelia, Suisun and stations between Suisun and Roseville.

Vacaville Branch. (Vacaville to Rumsey, inclusive.)

Placerville Branch. (Placerville to Ramona, inclusive.)

Walnut Grove Branch. (Walnut Grove, Hood and Freeport.)

Marysville, Yuba Branch. (Marysville to Roseville, inclusive.)

Hill Points. (Roseville to Colfax, inclusive.)

Western Pacific:

Kingdon to Oroville, inclusive.

Sacramento Northern Railway.

All Points.

L. A. & S. L.:

All Points.

Santa Fe:

All Points South of Merced, to and including Bakersfield.

[fol. 277] Prior to 1917 there was not any large perishable movement which occupied the refrigerator cars during the winter period from January to April. There was a considerable idle period, but the demand for refrigerator cars in the winter has increased in the last six or seven years, and there is every indication that the refrigerator cars will be employed more extensively in the winter months than they are now. The refrigerator cars are more continuously employed now throughout the year in handling parishable traffic than in the pre-war period. During the period of May and June the cantaloupe tonnage has increased to a great extent in the Imperial Valley in the last six or seven years. That traffic comes largely after the peak of the orange movement has passed, but before the deciduous movement has commenced in volume. Winter vegetables commence to move about the middle of December and the citrous business commences about the first of November and is moving in rather heavy volume throughout November, December and January.

Cross-examination:

I am not entirely clear as to just how many of the refrigerator cars remain idle after September and October. The majority of our shipments are consigned to Chicago, of which approximately thirty per cent rest there.

Redirect examination:

Exhibit No. 10 was taken from an exhibit presented by the carriers in a previous case on deciduous fruits. The importance of this exhibit is to show the difference between the pre-war schedule and service at the present time. The more expensive schedule would be the 138 hour schedule in effect in 1917. When trains are moved on a faster schedule, it is bound to cost a good deal more money.

[fol. 278] Between 1927 and 1928, carriers have increased the number of cars to the trains.

JOHN D. DEWAN was thereupon called as a witness on behalf of Complainant and, having been duly sworn, testified as follows:

I live in San Francisco, and am assistant to the General Manager of the California Growers' & Shippers' Protective [fol. 279] League, which position I have held since 1922.

Thereupon there were offered and marked for identification Exhibits Nos. 11 to 15.

The exhibit shown to me marked for identification as Exhibit No. 11, is a chart showing, in dollars per acre, relative farm values between the years 1919 and 1926: First, fresh deciduous fruits as specified; Second, all fruits and nuts; Third, prunes and raisins. This data was obtained from crop reports of the California and United States Department of Agriculture. This chart indicates that the deciduous fruits, including prunes and raisins, have suffered a material decline in per acre value between 1919 and 1926, and that fresh deciduous fruits had a slight increase in 1920. In 1926 the farm value per acre of deciduous fruits was 106, as compared with 250 in 1919.

Thereupon, there was offered and admitted in evidence Complainant's Exhibit No. 11, which is in the following form:

EXHIBIT No. 11

Witness: Dewan

Chart Showing, in Dollars Per Acre, Relative Farm Values of the Following California Crops for Years 1919 to 1926, Inclusive; Fresh Deciduous Fruits (Apricots, Grapes, Peaches, Pears, Plums), All Fruits (Fresh and Dried) and Nuts, Prunes, Raisins, As Reported in California Department of Agriculture Crop Reports.

Table of Farm Values, Dollars per Acre, Shown in This Chart

	1919	1920	1921	1922	1923	1924	1925	1926
Decid. Fruits	250	258	173	198	116	121	112	106
Fruits and Nuts	257	228	160	163	134	150	142	133
Prunes	312	120	119	130	103	112	111	87
Raisins	225	220	140	107	90	48	70	76

(As a part of the foregoing exhibit, there was introduced a chart showing in graphic form all of the data set forth therein.)"

The foregoing farm values are prices after picking, drying (if dried) and hauling, when sold locally; on products

sold in Eastern Markets, the price realized at shipping [fol. 280] points after deducting transportation, refrigeration, selling, loading and packing costs.

The document now shown to me and marked for identification, to be known as Complainant's Exhibit No. 12, shows in dollars per acre, the farm value of California fresh deciduous fruits as specified for the years 1919 and 1926, inclusive, shipped to eastern markets. This represents the deciduous fruits sold only in markets of New York, New Jersey and Chicago. The first year shown is 1919, because that is the first year for which reports on California crops are available.

Thereupon there was offered and admitted in evidence Complainant's Exhibit No. 12, which is in the following form:

EXHIBIT No. 12

Witness: Dewan

Chart Showing, in Dollars Per Acre, Farm Values of California Fresh Deciduous Fruits (Apricots, Table and Juice Grapes, Peaches, Pears, and Plums), Years 1919 to 1926, Inclusive.

Shipped to Eastern Markets

Farm Value Represents Prices Realized at Shipping Points (Deducting Transportation, Refrigeration, Selling, Loading and Packing Costs)
Table of Farm Values, Dollars per Acre, Shown in Chart

	1919	1920	1921	1922	1923	1924	1925	1926
Decid. Fruits, Fresh.....	332	379	188	190	149	146	94	94

(As a part of the foregoing exhibit, there was introduced a chart showing in graphic form all of the data set forth therein.)"

The document now shown to me and marked for identification as Complainant's Exhibit No. 13, shows the relative percentages of decline and partial recovery between the years 1919 and 1926, inclusive, in farm value, dollars per acre, of California fresh deciduous fruits, total production; California fresh deciduous fruits shipped to eastern markets; ten principal field crops of the United States.

All of the data was obtained from the same official reports. I have used the percentage figures which appear in this exhibit by taking the farm value, in dollars per acre, [fol. 281] in 1919 as the basis of 100%, and then by com-

putation determining the percentage relationship which in each succeeding year the farm value per acre bore to the 1919 value.

Thereupon there was offered and admitted in evidence Complainant's Exhibit No. 13, which is in the following form:

EXHIBIT No. 13

Witness: Dewan

Chart Showing Relative Percentages of Decline and Partial Recovery, Years 1919 to 1926, Inclusive, in Farm Values, Dollars per Acre, of California Fresh Deciduous Fruits, Total Production, (California Department of Agriculture Crop Reports)—California Fresh Deciduous Fruits Shipped to Eastern Markets—Ten Principal Field Crops of United States (U. S. Department of Agriculture Year Books).

Deciduous fruits include apricots, grapes, peaches, pears, plums.

Farm value represents: On deciduous fruits sold locally, the price received upon local delivery at producing point; on deciduous fruits sold in eastern markets, the price realized at shipping point after deducting transportation, refrigeration, selling, loading, and packing costs; on U. S. field crops, the price as of December 1st of current year.

Table of Percentages Shown in This Chart

	1919	1920	1921	1922	1923	1924	1925	1926
Calif. Fresh Deciduous Fruits (Calif. Dept. Agr. Reports).....	100	103	69	79	46	48	45	43
Calif. Fresh Deciduous Fruits (shipped to Eastern Markets)...	100	114	57	57	45	44	28	28
Ten principal Field Crops of the United States.....	100	65	40	54	59	67	60	54

(As a part of the foregoing exhibit there was introduced a chart showing in graphic form all of the data set forth therein.)"

The document now shown to me, and marked for identification as Complainant's Exhibit No. 14, shows the relative percentages of decline and advance between 1919 and 1926, inclusive, in farm values, dollars per acre, of California fresh deciduous and citrus fruits, prunes, raisins and vegetables, and seventeen California field crops; also ten principal field crops of the United States; also California fresh deciduous fruits shipped to eastern markets. In this docu-
[fol. 282] ment appears the source of the data and explanation of the derivation of farm values.

The showing made by this document is that the farm values per acre of the entire deciduous fruit industry of California have since 1919 suffered severe declines with some partial recovery. It shows deciduous fruits ranging

in 1926 from twenty-eight per cent to forty-three per cent of the 1919 values, decidedly lower than citrus fruits, vegetables and California field crops, and ten per cent lower than the ten principal field crops of the United States.

The showing with reference to citrus fruits is that there has been a recovery in 1926 to a point above the 1919 value. The citrus fruits have enjoyed a percentage over one hundred except in the years 1921, 1922 and 1923, and did not go below seventy per cent in those years. For the past few years the citrus fruits have enjoyed an average percentage of one hundred eighteen.

Thereupon there was offered and admitted in evidence Complainant's Exhibit No. 14, which is in the following form:

EXHIBIT No. 14

Witness: Dewan

Chart showing relative percentages of decline and advance, years 1919 to 1926, inclusive, in farm values, dollars per acre, of California fresh deciduous and citrus fruits, prunes, raisins, vegetables and field (17) crops, as reported in California Department of Agriculture crop reports—California fresh deciduous fruits shipped to the principal eastern markets—United States field (10) crops as reported in U. S. Department of Agriculture year books.

Fresh deciduous fruits include apricots, grapes, peaches, pears, plums. (1926 figures subject to revision.)

Farm value—all fruits and vegetables represents:

On all varieties Deciduous Fruits and Vegetables, sold in California, the prices received for unpacked product upon local delivery at producing points.

Values shown are prices for fresh product, except that, on prunes and raisins, the values are actual prices for dry product.

On other deciduous fruits dried, the prices on fresh basis, based on [fol. 283] actual prices received for dried product.

On all deciduous fruits and vegetables sold in eastern markets, and on all citrus fruits produced, the Farm Value represents the prices realized at shipping points in California, after deducting Railroad Freight, Refrigeration, Selling, Loading and Packing Costs.

Farm Value—Field Crops

The Market Prices as of December 1st Each Year

Table of Percentages Shown in This Chart

	1919	1920	1921	1922	1923	1924	1925	1926
Decid. Fruits (Dept. Agri.)	100	103	69	79	46	48	45	43
Decid. Fruits (East. Markets)	100	114	57	57	45	44	28	28
Prunes, Dry	100	30	38	42	33	36	36	28
Raisins	100	98	62	48	40	21	31	34
Citrus Fruits	100	103	70	71	80	119	116	120
Apples, Fresh	100	78	71	51	55	82	62	37
Vegetables, Fresh	100	115	103	143	147	107	104	92
Field Crops, Calif	100	83	56	69	67	94	86	69
Field Crops, U. S.	100	65	40	54	59	67	60	54

(As a part of the foregoing exhibit there was introduced a chart showing in graphic form all of the data set forth therein.)"

The document now shown to me and marked for identification as Complainant's Exhibit No. 15, shows, in dollars per acre, relative farm values between 1919 and 1926, and corresponds with Complainant's Exhibit No. 14, with the exception that I have utilized figures of dollars per acre rather than percentages.

Thereupon there was offered and admitted in evidence Complainant's Exhibit No. 15, which is in the following form:

[fol. 284] EXHIBIT No. 15

Witness: Dewan

Chart showing, in dollars per acre, relative farm values, years 1919 to 1926, inclusive, of California fresh deciduous and citrus fruits, prunes, raisins, vegetables and field (17) crops, as reported in California Department of Agriculture crop reports—California fresh deciduous fruits shipped to the principal Eastern Markets—United States field (10) crops, as reported in United States Department of Agriculture year book. Fresh deciduous fruits include apricots, grapes, peaches, pears, plums. (1926 figures subject to revision.)

Farm value—all fruits and vegetables represents:

On all varieties Deciduous Fruits and Vegetables, sold in California, the prices received for the unpacked product upon local delivery at producing points.

Values shown are prices for fresh product, except that, on prunes and raisins the values are actual prices for the dhy product. On other deciduous fruits dried, the prices on fresh basis, based on the actual prices received for the dried product.

On all Deciduous Fruits and Vegetables sold in Eastern Markets, and on all Citrus Fruits produced, Farm Value represents the prices realized at shipping points in California, after deducting Railroad Freight, Refrigeration, Selling, Loading and Packing costs.

Farm Value—Field Crops

The Market Price as of December 1st Each Year

Table of Farm Values Shown in This Chart

	1919	1920	1921	1922	1923	1924	1925	1926
	(Dollars per Acre)							
Decid. Fruits (Dept. Agr. Rept.)..	250	258	173	198	116	121	112	106
Decid. Fruits (East. Markets)....	332	379	188	190	149	146	94	94
Prunes, Dry.....	312	120	119	130	103	112	111	87
Raisins.....	225	220	140	107	90	48	70	76
Citrus Fruits.....	313	322	220	224	251	371	365	375
Apples, Fresh.....	254	199	179	129	140	209	156	93
Vegetables.....	200	230	206	286	293	213	208	184
Field Crops, Calif.....	50	41	28	34	38	47	43	34
Field Crops, U. S.....	36	23	14	19	22	24	22	19

(As a part of the foregoing exhibit there was introduced a chart showing in graphic form all of the data set forth therein.)"

[fol. 285] Cross-examination:

I took the year 1919 as the starting point because that was the earliest year available from the crop reports of the California Department of Agriculture. I have no knowledge as to conditions prior to 1919.

I had no connection with the deciduous fruit industry prior to 1919.

H. M. Remington was thereupon called as a witness on behalf of Complainant and, having been duly sworn, testified as follows:

I live in San Francisco. I am General Manager of the California Growers' & Shippers' Protective League, with which I have been employed since 1922. For ten years I was employed by the Michigan Central Railroad Company, closing my service as Chief of the Overcharge Section of the Freight Claim Department. From that employment I went to the Interstate Commerce Commission, Washington, D. C., where I was employed for nine years in the Division of Tariffs. For the next two years I was employed in San Francisco by the Pacific Coast Branch of the Division of Valuation of the Interstate Commerce Commission as Rate Clerk. Following that employment I came to the Traffic Bureau of the San Francisco Chamber of Commerce, remaining there for approximately four years, during the latter part of which time I was Assistant Manager of that Bureau. Leaving the Chamber of Commerce I took up my present employment.

The document now shown to me, entitled "Statement Showing Farm Values of Crops in California for Year 1925," was prepared by me from sources indicated in the last paragraph of the exhibit. The purpose of the exhibit is to show the tremendous farm value of perishable crops in California for the year 1925. It indicates that the total

farm value of the main fruit crops is $218,653,000, of which [fol. 286] the deciduous fruits amount to $105,756,000. The farm value of citrus fruits is $85,243,000.

Thereupon there was offered and admitted in evidence Complainant's Exhibit No. 16, which is in the following form:

[fol. 287]

EXHIBIT No. 16

Witness: Remington

Statement Showing Farm Values of Crops in California for the Year 1925

	Main field crops, fruits and vegetables	Main fruits and vegetables	Main fruits
Farm value as of December 1, 1925.....	$465,375,000	$270,700,000	$218,653,000

	Main field crops (1)	Vegetables	Deciduous fruits (2)	Citrus fruits (3)
Farm value as of December 1, 1925.....	$194,675,000	$52,047,000	$105,756,000	$85,243,000

Total Value—Main Fruit Crops.....	$218,653,000
Total Value—Main Field Crops.....	194,675,000
Total Value—Vegetable Crops.....	52,047,000
Grand Total Value—All Main Crops.....	$465,375,000

Fruit Crops—Value expressed as per cent of total value all crops.....	46.99%
Field Crops—Value expressed as per cent of total value all crops.....	41.83
Vegetable Crops—Value expressed as per cent of total value all crops...	11.18

[fol. 288] The document now shown to me is a table showing the production and value of specified fruit crops in California, 1924 to 1926, inclusive, and the information thereon was obtained from the monthly supplement for December, 1926, to Crops and Markets, a bulletin published by the United States Department of Agriculture. This exhibit covers the entire production of these commodities in California, which necessarily includes fruits consumed by canning and drying industries.

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(1) Main Field Crops include corn, wheat, oats, barley, rice, grain sorghum, beans, hay (tame and wild), potatoes, sweet potatoes, sugar beats, hops, cotton (lint), cottonseed, alfalfa seed and smaller miscellaneous crops.

(2) Deciduous fruits include pears, peaches, apricots, prunes, plums, cherries, raisins (dried), raisin grapes (marketed fresh), table grapes and wine grapes, but do not include apples.

(3) Citrus Fruits include oranges, lemons and grape fruit.

Figures for fruits and field crops are from "Summary of California Annual Crop Report—1926," issued January 5, 1927, by the United States Department of Agriculture and the California Department of Agriculture. Figures for vegetables are from "California Crop Report—1925," issued by the same departments."

[fol. 289] Thereupon, there was offered and admitted in evidence Complainant's Exhibit No. 17, which is in the following form:

"EXHIBIT No. 17

Witness: Remington

Table Showing Production and Value of Specified Fruit Crops in California, 1924-1926

Crop and year	Production	Unit	Farm value	
			Per unit	Total
Apples:				
1924	8,903,000	Bushel	1.22	$10,862,000
1925	6,016,000	"	1.15	6,918,000
1926	10,350,000	"	.50	5,175,000
Peaches:				
1924	13,751,000	"	.84	11,551,000
1925	16,418,000	"	.86	14,119,000
1926	21,252,000	"	.94	19,977,000
Pears:				
1924	5,542,000	"	1.60	8,867,000
1925	7,542,000	"	1.25	9,428,000
1926	9,000,000	"	.84	7,560,000
Apricots:				
1924	142,000	Ton	46.00	6,532,000
1925	150,000	"	54.00	8,100,000
1926	166,000	"	63.00	10,458,000
Prunes:				
1924	139,000	"	110.00	15,290,000
1925	146,000	"	110.00	16,060,000
1926	140,000	"	100.00	14,000,000
Plums:**				
1924	39,000	"	45.00	1,755,000
1925	51,000	"	40.00	2,040,000
1926	71,000	"	25.00	1,775,000
Cherries:				
1924	13,500	"	140.00	1,890,000
1925	12,000	"	160.00	1,920,000
1926	19,000	"	180.00	3,420,000
Grapes, all (fresh basis):				
1924	1,535,000	"	35.00	53,725,000
1925	***1,912,000	"	28.00	53,536,000
1926	****2,040,000	"	26.00	53,040,000
Oranges:				
1924	18,100,000	Box	2.10	38,010,000
1925	24,200,000	"	2.84	68,728,000
1926	24,000,000	"	3.00	72,000,000
[fol. 290] Grapefruit:				
1924	387,000	"	....	.....
1925	600,000	"	2.43	1,458,000
1926	600,000	"	2.50	1,500,000
Lemons:				
1924	5,125,000	"	2.40	12,300,000
1925	7,136,000	"	2.11	15,057,000
1926	7,200,000	"	2.00	14,400,000
Figs, Dried:				
1924	8,500	Ton	100.00	850,000
1925	9,600	"	110.00	1,056,000
1926	10,000	"	95.00	950,000

Crop and year	Production	Unit	Farm value Per unit	Farm value Total
Olives:				
1924	6,500	"	92.00	598,000
1925	14,000	"	60.00	840,000
1926	8,500	"	80.00	680,000
Almonds:				
1924	8,000	"	300.00	2,400,000
1925	7,500	"	400.00	3,000,000
1926	15,000	"	300.00	4,500,000
Walnuts:				
1924	22,500	"	420.00	9,450,000
1925	36,000	"	440.00	15,840,000
1926	14,000	"	480.00	6,720,000

* Dried Basis. On the average, about 2½ pounds of fresh fruit are required to make 1 pound of prunes.
** Includes small quantities of prune varieties shipped fresh; excludes prunes dried.
*** Exclusive of about 138,000 tons of grapes not harvested on account of poor marketing conditions and frost.
**** Exclusive of 15,000 tons not harvested.

(Foregoing table reproduced from Monthly Supplement for December, 1926, to "Crops and Markets," a Bulletin compiled and published by United States Department of Agriculture.)"

[fol. 291] The document now shown to me, entitled "Production and Prices of Grapes by States, 1924 to 1926," was prepared under my direction from the same source as the last exhibit. Attention may be invited to the fact that in the production of grapes California dominates the rest of the United States. For 1926 there was a total production of 2,040,000 tons in California out of a total production in the United States of 2,349,117 tons. California produces twenty times as many grapes as New York, twenty-five times as many as Michigan and eighty times as many as Ohio, those being the next most important grape producing states.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 18, which is in the following form:

(Here follows Exhibit No. 18, marked side folio pages 292 and 293.)

"EXHIBIT No. 18
Witness: Remington

Production and Prices of Grapes, by States, 1924-1926

State	Production			Price [4]			Total farm value, basis Seasonal price		
	1924	1925	1926	1924	1925	1926	1924	1925	1926
	Tons	Tons	Tons	Dollars per ton	Dollars per ton	Dollars per ton	Dollars	Dollars	Dollars
Maine	38	48	49	200			7,600		
New Hampshire	84	95	96	140			11,760		
Vermont	37	49	38	160			5,920		
Massachusetts	440	473	616	100			44,000		
Rhode Island	289	300	212	100			23,900		
Connecticut	1,075	1,063	1,275	120	100	55	129,000	106,300	70,125
New York	80,000	51,840	106,700	74	90	35	5,920,000	4,665,600	3,734,500
New Jersey	2,338	2,200	2,820	100	85	50	233,800	187,000	141,000
Pennsylvania	19,750	11,180	25,110	78	95	34	1,540,500	1,062,100	853,740
Ohio	20,400	13,750	29,100	80	95	40	1,632,000	1,306,250	1,164,000
Indiana	3,185	2,450	4,606	84	73	45	267,540	178,850	207,270
Illinois	4,900	3,360	6,532	100	72	50	490,000	241,920	326,600
Michigan	64,000	22,100	60,900	76	74	35	4,864,000	1,635,400	2,131,500
Wisconsin	279	248	409	140			39,060		
Minnesota	88	30	85	134			11,792		
Iowa	4,658	2,835	6,052	102	85	50	475,116	240,975	302,600
Missouri	5,840	7,300	12,800	76	57	45	443,840	416,100	579,600
North Dakota									
South Dakota									
Nebraska	1,068	770	1,584	120			128,160		
Kansas	2,925	2,216	3,700	90	60	60	263,250	132,960	222,000
Delaware	1,400	1,275	1,536	80			112,000		
Maryland	770	781	1,330	120			92,400		
Virginia	2,349	1,653	2,790	180			422,820		
[illegible]	1,539	760	1,696	100			153,900		

[292]

"Exhibit No. 18

Witness: Remington

Production and Prices of Grapes, by States, 1924-1926

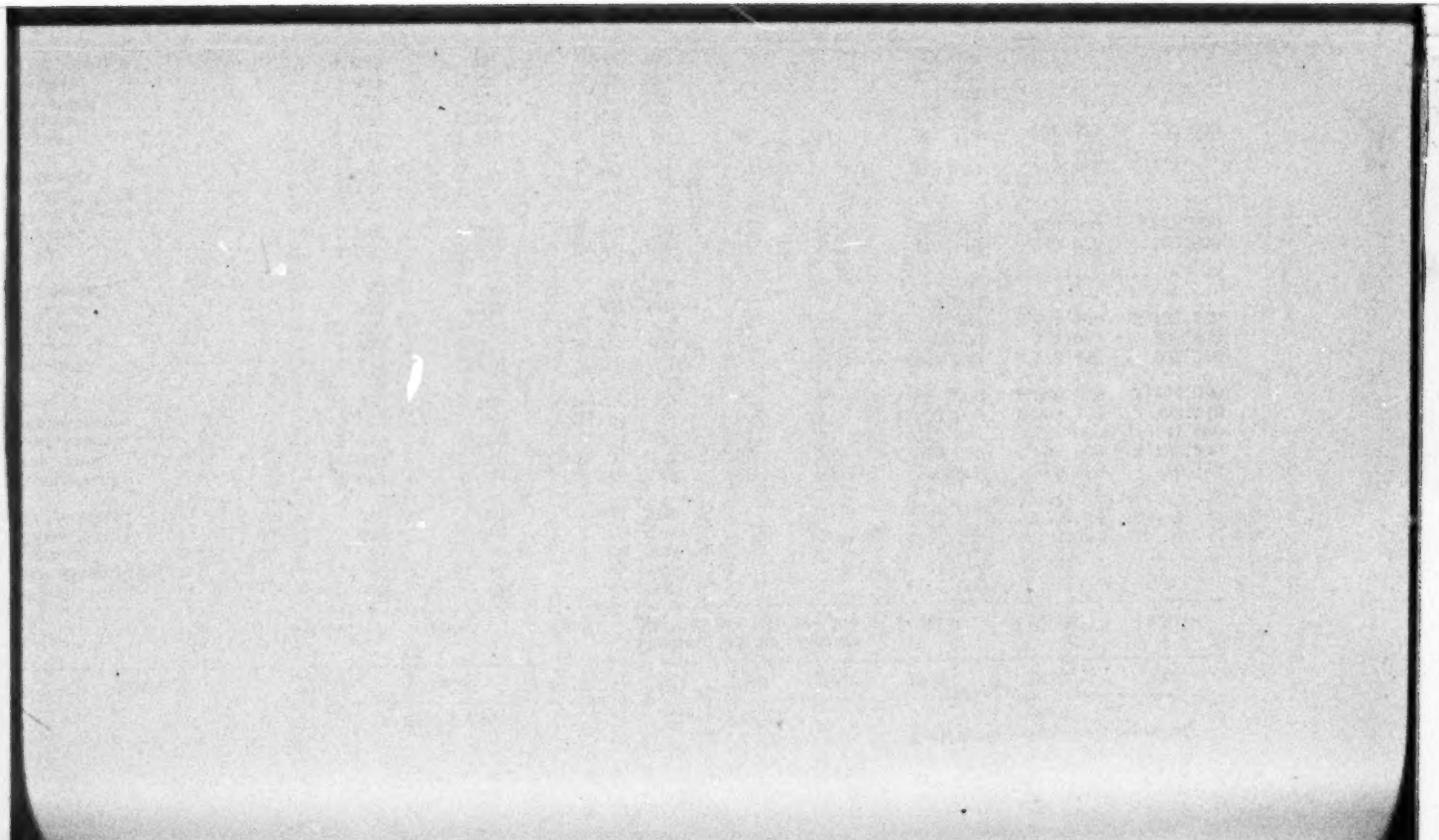
State	Production			Price [a]			Total farm value, basis Seasonal price		
	1924	1925	1926	1924	1925	1926	1924	1925	1926
	Tons	Tons	Tons	Dollars per ton	Dollars per ton	Dollars per ton	Dollars	Dollars	Dollars
Maine	38	48	49	200			7,600		
New Hampshire	84	95	96	140			11,760		
Vermont	37	49	36	160			5,920		
Massachusetts	440	473	616	100			44,000		
Rhode Island	289	300	212	100			28,900		
Connecticut	1,075	1,063	1,275	120	100	55	129,000	106,300	70,125
New York	80,000	51,840	106,700	74	90	35	5,920,000	4,665,600	3,734,500
New Jersey	2,338	2,200	2,820	100	85	50	233,800	187,000	141,000
Pennsylvania	19,750	11,180	25,110	78	95	34	1,540,500	1,062,100	853,740
Ohio	20,400	13,750	29,100	80	95	40	1,632,000	1,306,250	1,164,000
Indiana	3,185	2,450	4,606	84	73	45	267,540	178,850	207,270
Illinois	4,900	3,360	6,532	100	72	50	490,000	241,920	326,600
Michigan	64,000	22,100	60,900	76	74	35	4,864,000	1,635,400	2,131,500
Wisconsin	279	248	409	140			39,060		
Minnesota	88	30	85	134			11,792		
Iowa	4,658	2,835	6,052	102	85	50	475,116	240,975	302,600
Missouri	5,840	7,300	12,800	76	57	45	443,840	416,100	579,600
North Dakota									
South Dakota									
Nebraska	1,068	770	1,584	120			128,160		
Kansas	2,925	2,216	3,700	90	60	60	263,250	132,960	222,000
Delaware	1,400	1,275	1,536	80			112,000		
Maryland	770	781	1,330	120			92,400		
Virginia	2,349	1,653	2,790	180			422,820		
West Virginia	1,539	760	1,696	100			153,900		
North Carolina	6,600	4,950	6,840	140	74	50	924,000	366,300	342,000
South Carolina	1,425	1,078	1,785	160			228,000		
Georgia	1,638	1,470	1,892	220			360,360		
Florida			700						
Kentucky	1,094	972	1,274	88			96,272		
Tennessee	1,496	1,278	1,672	148			221,408		
Alabama	825	880	913	140			115,500		
Mississippi	281	285	300	160			44,960		
Arkansas	3,000	4,400	13,000	69	60	38	207,000	264,000	494,000
Louisiana	36	42	42	180			6,480		
Oklahoma	1,875	1,750	1,800	100			187,500		
Texas	1,320	940	1,200	200			264,000		
Montana									
Idaho	240	270	300	100			24,000		
Wyoming									
[fol. 293] Colorado	280	260	320	120			33,600		
New Mexico	520	475	531	140			72,800		
Arizona	350	419	604	160			56,000		
Utah	1,000	1,000	1,300	100			100,000		
Nevada	225	240	230	120			27,000		
Washington	1,732	3,100	2,500	96	65	45	166,272	201,500	112,500
Oregon	1,333	1,500	1,800	90	62	55	119,970	93,000	99,000
California	1,535,000	1,912,000**	2,040,000***	35	28	26	53,725,000	53,536,000	53,040,000
United States	1,777,722	2,064,085	2,349,117	41.79	32.03	27.58	74,297,480	66,115,058	64,781,911

[a] The average price for the states reporting price, except California, is used for computing the value of the grape crop in the less important states for which no price is shown.

** Exclusive of 138,000 tons not harvested because of poor marketing conditions and frost.

*** Exclusive of 15,000 tons not harvested.

(Foregoing table taken from "Statistics of Important Crops, by States, 1924-1926" published in monthly supplement for December, 1926, to "Crops and Markets," by United States Department of Agriculture.)



[fol. 294] The statement now shown to me, entitled "Carload Shipments of Grapes, Shown by States," was also prepared under my direction from the same source. This exhibit shows that for the season up to November 30, 1926, there was a total of 77,090 carloads of grapes shipped by the states appearing in the exhibit, of which California shipped 62,609 cars. These two exhibits emphasize the value of the grape industry to the State of California and to the carriers who transport that production, and that it certainly is not an industry which should be destroyed at this time.

[fol. 295] Thereupon there was offered and admitted in evidence Complainant's Exhibit No. 19, which is in the following form:

"EXHIBIT No. 19

Witness: Remington

Carload Shipments of Grapes Shown by States (Shipments During November and for Season to November 30, 1926, with Comparison)

Shipping district	November			Season total to Nov. 30, 1926	Season total to Nov. 30, 1925	Season total to Nov. 30, 1924	Total last season
	1926	1925	1924				
California:							
Northern District	205	587	931	16,488	19,585	17,202	19,603
Southern District	2	10	4	3,156	3,814	3,279	3,836
Central District	4,512	4,519	3,743	42,965	52,030	36,730	52,337
Michigan	43	0	29	3,012	398	4,680	398
New York	2,016	102	1,037	7,010	3,763	5,609	3,763
Ohio	31	0	5	92	19	29	19
Pennsylvania	465	67	233	1,355	589	1,166	589
Others	0	0	0	3,012	1,332	1,099	1,332
Total	7,274	5,285	5,982	77,090	81,530	69,794	81,877

(Foregoing figures from Monthly Supplement for December, 1926, to "Crops and Markets" compiled and published by United States Department of Agriculture.)"

[fol. 296] There was also prepared under my direction, the statement shown to me, entitled "Pears: Carlot Shipments from California and All Other States, June, 1920—May, 1925," and the figures shown here were also taken from the same source. This statement shows the relative importance of the shipments of pears made from California, compared to the shipments by carlots from all other states. I have no official figures concerning plums, but California ships a greater proportion of the plums than all the rest of the United States. Apricots are a California fruit and I do not believe they are produced in any quantity anywhere else in the United States.

[fol. 297] Thereupon there was offered and admitted in evidence Complainant's Exhibit No. 20, which is in the following form:

"EXHIBIT No. 20

Witness: Remington

Pears: Car-lot Shipments from California and All Other States, June, 1920-May, 1925

	Crop movement season*				
	1920	1921	1922	1923	1924**
California	5,016	4,500	6,465	7,143	6,312
All Other States	10,925	8,553	13,916	11,446	9,934
Total United States	15,941	13,053	20,381	18,589	16,246

Division of Statistical and Historical Research. Compiled from Reports of Fruit and Vegetable Division. Shipments as shown in car lots include those by boat reduced to car-lot basis.

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*Crop movement season extends from June 1 of one year through May of the following year.

**Preliminary.

(Figures taken from 1925 Year Book, United States Department of Agriculture.)"

[fol. 298] The statement shown to me, entitled "Fresh Peaches, Carlot Shipments by States of Origin, 1920-1925," was prepared by me from the official source shown on the exhibit.

These figures exclude the tonnage moving between points within California, and include all shipments to destinations outside of the State. Few of the California peaches are marketed east of the Mississippi River due to competition.

EXHIBIT No. 21

Witness: Remington

Fresh Peaches, Carlot Shipments by States of Origin, 1920-1925

State	1920	1921	1922	1923	1924	Average, 1920-24	1925*
Georgia	5,987	10,330	7,370	8,701	13,504	9,178	13,543
New York	4,635	2,96[illegible]	6,862	2,777	3,436	4,135	3,009
California†	3,148	3,334	2,315	3,676	1,838	2,862	2,951
Colorado	1,091	1,223	1,428	1,254	1,772	1,354	747
New Jersey	1,022	5	1,595	1,790	1,461	1,175	1,044
Arkansas	56	607	1,563	724	2,785	1,147	2,293
Michigan	2,358	176	1,650	1,087	105	1,075	254
Utah	366	805	1,261	1,203	1,109	949	88
Washington	221	1,117	990	1,645	412	877	992
North Carolina	379	594	1,452	215	1,657	859	1,968
Illinois	557	35	1,683	390	860	705	879
Ohio	1,025	88	620	625	14	474	469
Texas	76	1,024	32	102	763	399	1,082
Tennessee	154	217	248	53	752	285	605
All others	2,363	470	2,512	2,747	3,501	2,319	1,004
Total	23,438	22,992	31,581	26,989	33,969	27,793	30,628

*Year 1935 Subject to Revision
†California Interstate Shipments

[fol. 299] Thereupon there was offered and admitted in evidence Complainant's Exhibit No. 21, which is in the following form:

EXHIBIT No. 22

Witness: Remington

Table Showing Number of Cars of Deciduous Fruit Shipped from California to Destinations in Other States, 1895 to 1926, Inclusive

	Apricots	Cherries	Grapes	Peaches	Pears	Plums	Misc.*	Total
1895...	162	180	1,010	1,289	1,187	465	170	4,463
1896...	172	88	712	976	1,624	407	20	3,999
1897...	177	239	1,100	1,316	1,640	742	48	5,262
1898...	123	297	734	1,103	1,595	542	17	4,411
1899...	90	85	847	2,625	1,684	885	163	6,379
1900...	152	238	825	1,361	2,115	1,158	74	5,923
1901...	201	110	966	1,901	1,535	936	71	5,720
1902...	222	245	1,033	1,777	2,011	1,473	16	6,777
1903...	241	211	1,804	1,857	1,720	1,145	22	7,000
1904...	97	209	1,451	559	2,186	1,053	28	5,583
1905...	279	79	1,602	1,946	1,013	1,391	16	6,326
1906...	16	150	2,052	584	1,513	1,220	22	5,557
1907...	71	133	3,460	699	1,039	1,039	18	6,459
1908...	232	208	3,819	1,980	2,702	1,763	15	10,719
1909...	210	250	5,880	2,599	2,638	1,526	19	13,122
1910...	290	250	4,948	2,518	2,361	1,552	17	11,936
1911...	215	216	6,374	2,027	2,325	1,366	16	12,539
1912...	196	244	6,357	1,621	3,135	1,776	15	13,344
1913...	158	231	6,363	2,359	2,496	1,706	19	13,332
1914...	382	166	8,773	2,144	2,725	1,907	49	16,146
1915...	392	205	9,563	1,689	2,646	2,225	58	16,778
1916...	290	164	9,722	1,909	3,701	1,999	106	17,891
1917...	403	330	13,944	2,432	4,802	2,651	66	24,628
1918...	441	351	16,358	3,137	4,570	2,483	77	27,417
1919...	420	335	19,228	2,773	4,248	2,918	49	29,971
1920...	287	494	24,152	3,148	4,391	2,564	210	35,246
1921...	285	665	28,419	3,328	4,159	3,117	236	40,209
1922...	196	502	41,463	2,355	5,754	3,509	182	53,961
1923...	714	581	52,339	3,690	7,031	5,231	191	69,777
1924...	512	711	54,775	1,843	5,785	2,885	275	66,786
1925...	403	512	71,155	2,960	7,787	3,709	269	86,795
1926...	264	741	60,786	1,619	9,879	5,220	294	78,803

* Misc. includes Quinces, Figs, Nectarines, etc.

Sources of Data:

Years 1920-1923. U. S. D. A. Statistical Bulletin, No. 8, pp. 41-50, 1925.

Years 1924-1925: Copies from Bureau of Agricultural Economics.

(Foregoing table copied from Circular 1 issued by College of Agriculture, University of California, in April, 1926, and entitled "Peaches"—Series on California Crops and Prices.)

[fol. 300] I have prepared a table from records issued by the carriers showing the carload shipments of deciduous fruit from California to destinations in other states from 1895 to 1926, inclusive. Eighteen ninety-five was the first year for which I was able to obtain the figures. For the year 1926 the table includes 1,344 cars moved by express. Of the 77,459 cars remaining, 5,384 cars originated south of the Tehachapi Mountains, and 72,075 cars north thereof. This exhibit shows that the movement of apricots is negligible. The cherries move principally by express and are not particularly involved in this case. That leaves our industry specifically interested in grapes, peaches, pears and plums. In 1895 the total movement for the year amounted to 4,463 cars; in 1916 17,891 cars, and in 1925 86,795 cars. This exhibit emphasizes the importance of the deciduous fruit industry to the State of California and to the carriers which serve that state. This statement covers all shipments moving without the State of California, including the Pacific Northwest and the Intermountain territory west of Group J. A very, very small percentage moves to points west of Group J.

For the year 1926 the perishable movement from the State of California to interstate destinations was 210,000 carlots, in round figures, 80,000 cars of which were fresh deciduous fruits, 60,000 cars of citrus, 17,000 cars of cantaloupes, and 57,000 cars of fresh vegetables. The total interstate and intrastate movement was 268,703 carloads.

[fol. 301] Thereupon there was offered and admitted in evidence Complainant's Exhibit No. 22, which is in the following form:

[fol. 302] I have also prepared an exhibit showing the projection of indicated rate of growth of movement of deciduous fruit to interstate destinations, to 1930.

Taking into consideration the percentage increases as shown by the number of carlots shipped from 1916 to 1924, and more particularly the increase of 20,000 carloads, 1925 over 1924, I feel safe in stating that if we can overcome the barrier of the transportation charges and reduce in some measure our other costs, by the year 1930 we will at least reach a figure of 100,000 carloads.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 23, which is in the following form:

[fol. 303] EXHIBIT No. 23

Witness: Remington

Growth in Carload Shipments of Fresh Deciduous Fruits (Apricots, Grapes, Peaches, Pears, Plums) from California for the Years 1916 to 1926, Inclusive, and Projection of Indicated Rate of Growth to 1930.

Year	Number of carloads	Projection of indicated rate of growth
1916	17,891 (100%)	.....
1917	24,628	.....
1918	27,417	.....
1919	29,971	.....
1920	35,246	.....
1921	40,209	.....
1922	53,961	.....
1923	69,777	.....
1924	66,786	.....
1925	86,795	.....
1926	78,803	.....
1927	.....	500%
1928	.....	525%
1929	.....	550%
1930	.....	575%
		(103,171 carloads)

[fol. 304] I have prepared a statement which is now shown to me, showing the average prices received in the eastern markets for California deciduous fruits from 1917 to 1926, inclusive. These average prices cover the auctions of Chicago and New York-New Jersey tidewater. The prices prior to 1917 are not shown because they are not available.

This exhibit shows that from 1917 to 1920 there was an upward trend in the prices received. Since that time there has been a downward trend until the year 1925, with a slight recovery in 1924. The prices received in 1926 were substantially the same as those received in 1925 and very little higher than those received in 1917.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 24, which is in the following form:

[fol. 305]

EXHIBIT No. 24

Witness: Remington

Statement of Average Prices Received in Eastern Markets for Deciduous Fruits,—1917 to 1926, Inclusive
Average Price per 100 Pounds—Includes Weight of Containers

	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926
Apricots	$5.52	$5.64	$7.81	$11.70	$7.83	$7.91	$5.70	$6.07	$6.95	$8.23
Table Grapes	4.51	6.41	7.01	8.63	6.71	5.98	4.92	4.85	4.33	4.78
Juice Grapes	4.39	5.63	7.02	9.99	7.13	6.28	5.81	6.56	4.78	4.57
Peaches	3.92	5.21	4.63	5.48	5.68	3.68	5.04	6.46	6.37	5.95
Pears	5.45	6.00	7.48	8.92	7.04	5.48	6.12	7.78	5.87	5.53
Plums	5.43	7.06	7.30	9.55	7.08	5.56	5.41	7.53	6.73	5.49
All Varieties (Weighted Average.)	4.85	6.19	7.08	8.84	6.90	5.95	5.44	5.78	4.88	4.92

[fol. 306] The statement shown to me, entitled "Statement of Average Prices Received in Eastern Markets for Deciduous Fruits, 1917 to 1926, Inclusive," was prepared by me, and differs from the previous exhibit in that the weight of containers is not included. The fruit is purchased on a net basis in the eastern markets.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 25, which is in the following form:

[fol, 307]

EXHIBIT No. 25

Witness: Remington

Statement of Average Prices Received in Eastern Markets for Deciduous Fruits,—1917 to 1926, Inclusive
Average Price per 100 Pounds—Weight of Containers not Included

	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926
Apricots	$5.84	$6.98	$9.66	$14.48	$9.66	$9.78	$6.90	$7.34	$8.51	$10.09
Table Grapes	5.05	7.20	7.94	9.74	7.57	6.76	5.58	5.53	4.99	5.50
Juice Grapes	5.06	6.50	8.10	11.53	8.22	7.25	6.70	7.57	5.51	5.27
Peaches	4.68	6.22	5.54	6.55	6.78	4.39	6.01	7.72	7.60	7.10
Pears	5.94	6.52	8.13	9.09	7.66	5.95	6.66	8.45	6.38	6.03
Plums	6.42	8.34	8.63	11.28	8.77	6.57	6.40	8.88	7.96	6.49
All Varieties (Weighted Average.)	5.43	6.93	7.99	9.97	7.82	6.74	6.19	6.58	5.60	5.62

[fol. 309]

COMPLAINA

Wit

INTERSTATE

Do

CALIFORNIA GROWERS

THE ATCHISON, TOPEKA A

Statement Showing Returns from Sale of California Deciduous Fruits in Eastern Auction
Returns, Selling and Loading Charges, Percentage of Total Transp

(Sales Returns and Expenses Shown in Ce

Transportation, Refrigertaion, and Lo

C

	Transportation charge	Refrigeration charge	Total transp. & refrig. costs
	Summary—Apricots, Table Grapes, Juice Grapes		
1920	167	38	205
1921	192	38	230
1922	179	32	211

FOLD OUT IS TOO LARGE TO BE FILMED

[fol. 308] The statement now shown to me entitled "Statement Showing Returns from Sale of California Deciduous Fruits in Eastern Auction Markets; Transportation and Refrigeration Charges; Percentage of Transportation Expenses to Sales Returns; Selling and Loading Charges; Percentage of Total Transportation and Selling and Loading Expenses to Sales Returns," was prepared by me. The column headed "Per Cent of Transp. & Refrig. Costs to Market Price" shows, with respect to the summary of all of the figures, a steady upward movement in the figures, 1920 to 1926, from twenty-three to forty-three per cent. The next column indicates the selling and loading costs per hundred pounds. In direct opposition to the increase in the transportation and loading costs, this column shows a decline from 74 cents in 1920 to 46 cents in 1926. The last column shows the per cent of transportation, refrigeration, selling and loading costs to the average market price. This column shows that these costs have increased from 32 per cent in 1920 to 52 per cent in 1926 and are now consuming more than one-half of the prices received.

Thereupon there was offered and admitted in evidence Complainant's Exhibit No. 26, which is in the following form:

(Here follows Complainant's Exhibit No. 26, marked side folio page 309)

[fol. 310] The statement now shown to me is similar in form to that of Exhibit No. 26, with the exception that this exhibit does not contemplate the weight of containers. The column at the extreme right of the upper group of figures shows that the ratio of transportation, refrigeration, selling and loading costs to the average market price has increased from 30 per cent in 1920 to 56 per cent in 1926.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 27, which is in the following form:

(Here follows Complainant's Exhibit No. 27, marked side folio page 311)

[fol. 312] I have prepared a statement showing the history of carload rates on deciduous fruits from California

points to eastern defined territories from June 24, 1918, to March 1, 1927, inclusive. The rates shown on this exhibit commence with June 24, 1918, because we felt that that date was the last date upon which the normal basis of rates obtained throughout the country. On June 25, 1918, the rates were increased by 25 per cent, which, of course, disturbed all previously existing relationships. Further, the rate of $1.15 had been in effect since the year 1911, and we felt it unprofitable to go back of the year 1911, partially because the 1911 movement of deciduous fruits was relatively small compared to our present movement. $1.15 is simply the pre-war rate.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 28, which is in the following form:

(Here follows Complainant's Exhibit No. 28, marked side folio page 313)

[fol. 314] I compiled a statement showing the carload rates in effect on deciduous fruits and upon other fruits and vegetables from California points to points in eastern defined territories. The document now shown to me is a copy of that statement. The commodities shown hereon are the principal fruits and vegetables of California that move to transcontinental territory. I have shown the minimum weight in each instance.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 29, which is in the following form:

(Here follows Complainant's Exhibit No. 29, marked side folio page 315)

[fol. 316] I prepared an exhibit presenting a further analysis of the rates upon perishable commodities from California to points in eastern defined territories. The document now shown to me is a copy of that statement. This statement shows the earnings per car, per net ton mile and per gross ton mile, under the rates on deciduous fruits, apples, oranges, lemons, vegetables, and so forth. This

[fol. 313]

COMPLAINANT

Witness:

INTERSTATE CO

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CALIFORNIA GROWERS AND

THE ATCHISON, TOPEKA AND S

Statement Showing History of Carload Rates on Deciduous Fruits, Applying from C
Rates Apply via Gateway
(Rates in Cen

Decid
(Minimum W

Date	A	B	C	D
June 24, 1918	115	115	115	115
June 25, 1918	144	144	144	144
Rate increase	29	29	29	29
Per cent increase, June 25, 1918, over June 24, 1918	25.2	25.2	25.2	25.2
Aug. 26, 1920	192	192	192	192
Rate increase	48	48	48	48
Per cent increase, 1920 over June 25, 1918	33.3	33.3	33.3	33.3
Jan. 1, 1922	173	173	173	173
*Rate decrease	19	19	19	19
*Per cent decrease, 1922 from 1920	10	10	10	10
Nov. 18, 1922	(Effective to Groups K, L, M)			
March 1, 1927	173	173	173	173
Rate increase over June 24, 1918	58	58	58	58
Per cent increase Mar. 1, 1927, over June 24, 1918	50.4	50.4	50.4	50.4

[* In red in copy.]

[fol. 313]

COMPLAINANT'S EXHIBIT No. 28

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

Statement Showing History of Carload Rates on Deciduous Fruits, Applying from California Points to Eastern Defined Territories, June 24, 1918, to March 1, 1927, Inclusive
Rates Apply via Gateways, Note A, as Shown in Tariff
(Rates in Cents per 100 Pounds)

Deciduous Fruits
(Minimum Weight, 26,000 lbs.)

Date	From California to Groups specified												T.C.F.B. I. C. C. No.	Sup.	Tariff item
	A	B	C	D	E	F	G	H	J	K	L	M			
June 24, 1918	115	115	115	115	115	115	115	115	115				1,038		500
June 25, 1918	*144	144	144	144	144	144	144	144	144				1,038	32	500
Rate increase	29	29	29	29	29	29	29	29	29						
Per cent increase, June 25, 1918, over June 24, 1918	25.2	25.2	25.2	25.2	25.2	25.2	25.2	25.2	25.2						
Aug. 26, 1920	192	192	192	192	192	192	192	192	180				1,065	19	635
Rate increase	48	48	48	48	48	48	48	48	36						
Per cent increase, 1920 over June 25, 1918	33.3	33.3	33.3	33.3	33.3	33.3	33.3	33.3	25						
Jan. 1, 1922	173	173	173	173	173	173	173	173	162				1,087	24	635
*Rate decrease	19	19	19	19	19	19	19	19	18						
*Per cent decrease, 1922 from 1920	10	10	10	10	10	10	10	10	10						
Nov. 18, 1922	(Effective to Groups K, L, M)									173			1,108		770
March 1, 1927	173	173	173	173	173	173	173	173	162	173			1,174		1,945
Rate increase over June 24, 1918	58	58	58	58	58	58	58	58	47						
Per cent increase Mar. 1, 1927, over June 24, 1918	50.4	50.4	50.4	50.4	50.4	50.4	50.4	50.4	40.8						

[* In red in copy.]

[fol. 315]

COMPLAINANT'S EXHIBIT No. 29

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

Statement Showing Carload Rates in Effect March 1, 1927, on Deciduous Fruits from California Points to Eastern Defined Territory Compared with Rates on Apples, Oranges, Lemons, Vegetables, Cantaloupes and Melons Between Same Points

(T. C. F. B. Tariff 3-U, I. C. C. 1174, and Supplements)
(Rates in Cents per 100 Pounds)

Commodity	From California points to groups specified												Min. wt. (pounds)	T. C. F. B. tariff I. C. C. 1174	
	A	B	C	D	E	F	G	H	J	K	L	M		Sup.	Item
Deciduous Fruits	173	173	173	173	173	173	173	173	162	173	173	173	26,000	.....	1,945
Apples	150	150	150	150	150	150	150	150	141	*150	*150	*150	{31,000 (a)	.....	1,940
Oranges	155	155	155	155	155	155	155	155	155	155	155	155	{35,000 (b)	.....	1,940
Lemons	150	150	150	150	150	150	150	150	141	150	150	150	36,000	.....	4,110
Fresh Vegetables (Pkgs.)	175	173	165	146	146	139	139	139	134	175	173	165	26,200	.....	1,935
Melons	175	173	165	146	146	139	139	139	134	175	173	165	20,000	8	3,510-A
Cantaloupes	175	173	165	146	146	139	139	139	134	175	173	165	20,000	8	3,510-A
Vegetables (Bags)	151	135½	128	110	110	110	110	110	106	151	135½	128	30,000	9	3,500-A
Cabbage, Fresh (Crts.)	151	135½	128	†110	110	110	110	110	106	.....	.....	.....	24,000	.....	3,505

* No storage in transit.
† Will not apply to New York via Southern Pacific Co., Morgan or Mallory Steamship lines.
(a) Cars under 32 ft. 9 inches.
(b) Cars 32 ft. 9 inches and over.

tabulation shows that to Groups A and B the rate on deciduous fruit is higher than the rate on any other commodity listed therein, with the exception of fresh vegetables. To Groups D, F and G the rates on deciduous fruits are higher than the rates on any other commodity listed.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 30, which is in the following form:

[fol. 317]

COMPLAINANT'S EXHIBIT No. 30

Witness: Remington

INTERSTATE COMMERCE COMMISSION

Docket No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY et al.

Statement Showing Earnings Per Car, Per Net Ton Mile and Per Gross Ton Mile, Under Rates on Deciduous Fruits, Apples, Oranges, Lemons, Vegetables, Cantaloupes and Melons, from Califnornia Points to Eastern Territory Groups Shown Below and Contained in T. C. F. B. Tariff No. 3-U, I. C. C. 1174, and Supplements Thereto

(Rates in Effect March 1, 1927)

Commodity	Rate per 100 lbs. (cents)	Min. weight (pounds)	Per car	Per net ton mile (cents)	Per gross ton mile (cents)	T. C. F. B. tariff I. C. C. 1174 Sup.	Item
From California Points to Group A (3170 Miles)							
Deciduous Fruits	173	26,000	$449.80	1.09	.373	..	1945
Apples	150	31,000	465.00	.95	.362	..	1940
Apples	150	35,000	525.00	.95	.39	..	1940
Oranges	*155	36,000	558.00	.98	.41	..	4110
Lemons	150	26,200	393.00	.95	.325	..	1935
Fresh Vegetables, Melons, Cantaloupes	175	20,000	350.00	1.10	.315	8	3510-A
Vegetables (Bags)	151	30,000	453.00	.96	.36	9	3500-A
Cabbage, fresh	151	24,000	362.40	.95	.309	..	3505
From California Points to Group B (2600 Miles)							
Deciduous Fruits	173	26,000	$449.80	1.34	.455	..	1945
Apples	150	31,000	465.00	1.15	.441	..	1940
Apples	150	35,000	525.00	1.15	.475	..	1940
Oranges	*155	36,000	558.00	1.19	.50	..	4110

* Terminal charge of three (3) cents per 100 lbs. to certain Terminal Group A destinations.

NOTE.—Tare of car, 25 tons.

Lemons	150	26,200	393.00	1.15	.40	..	1935
Fresh Vegetables, Melons, Cantaloupes	173	20,000	346.00	1.33	.38	8	3510-A
Vegetables (Bags)	135½	30,000	406.50	1.04	.39	9	3500-A
Cabbage, fresh	135½	24,000	325.20	1.04	.34	..	3505
[fol. 318] From California Points to Group D (2261 Miles)							
Deciduous Fruits	173	26,000	$449.80	1.53	.52	..	1945
Apples	150	31,000	465.00	1.33	.51	..	1940
Apples	150	35,000	525.00	1.33	.54	..	1940
Oranges	*155	36,000	558.00	1.37	.57	..	4110
Lemons	150	26,200	393.00	1.33	.45	..	1935
Fresh Vegetables, Melons, Cantaloupes	146	20,000	292.00	1.29	.37	8	3510-A
Vegetables (Bags)	110	30,000	330.00	.97	.36	9	3500-A
Cabbage, fresh	110	24,000	264.00	.98	.32	..	3505
From California Points to Group F (1773 Miles)							
Deciduous Fruits	173	26,000	$449.80	1.95	.66	..	1945
Apples	150	31,000	465.00	1.69	.64	..	1940
Apples	150	35,000	525.00	1.69	.69	..	1940
Oranges	*155	36,000	558.00	1.75	.73	..	4110
Lemons	150	26,200	393.00	1.69	.59	..	1935
Fresh Vegetables, Melons, Cantaloupes	139	20,000	278.00	1.57	.44	8	3510-A
Vegetables (Bags)	110	30,000	330.00	1.24	.47	9	3500-A
Cabbage, fresh	110	24,000	264.00	1.24	.40	..	3505
From California Points to Group J (1350 Miles)							
Deciduous Fruits	162	26,000	$421.20	2.4	.82	..	1945
Apples	141	31,000	437.10	2.09	.80	..	1940
Apples	141	35,000	493.50	2.09	.86	..	1940
Oranges	*155	36,000	558.00	2.29	.96	..	4110
Lemons	141	26,200	369.42	2.09	.72	..	1935
Fresh Vegetables, Melons, Cantaloupes	134	20,000	268.00	1.98	.57	8	3510-A
Vegetables (Bags)	106	30,000	318.00	1.57	.59	9	3500-A
Cabbage, fresh	106	24,000	254.40	1.63	.69	..	3505

* Terminal charge of three (3) cents per 100 lbs. to certain Terminal Group A destinations.
NOTE.—Tare of car, 25 tons.

[fol. 319] The basis on which I arrived at the miles shown from Groups A, B and others on this exhibit is as follows: To Group A, we took San Francisco as a central point from which to start in California, and we used the distance of 2,260 miles from San Francisco to Chicago. To that we added the Erie mileage from Chicago to New York, something in the neighborhood of 900-and-some-odd miles. It is the same distance to Chicago, in computing the distance to Group B, and we took the New York Central distance from Chicago to Buffalo. To Group D the distance is the San Francisco-Chicago distance. To Group F we took a representative point, and to Group J we took the distance to Denver via Ogden and the Rio Grande Railroad. I do not want it to be inferred from this exhibit that I would favor breaking up the $1.73 as a blanket rate.

I have prepared a further exhibit which analyzes the earning power of the rates upon the several perishables which I have listed, in relation to average load and the average haul. The document now shown to me is a copy of that statement. I have shown as the rate on deciduous fruits in this statement the proposed rate of $1.44 per 100 pounds. I have computed the earnings to the average load of 30,000 pounds. The average haul of 2900 miles on deciduous fruits is obtained from the record in Docket No. 15,137. The average load on oranges and lemons was taken from the shipping records of the Stewart Fruit Company. The average weight on apples was taken from Exhibit No. 92 at the hearing in Docket 15,137, and on fresh vegetables from the Commission's report in the Citrus League case, found at 58 I. C. C. 385. The average loads on cantaloupes and lettuce were taken from the shipping records of the Earl Fruit Company and the Pioneer Fruit Company. The [fol. 320] average hauls on oranges, lemons, fresh vegetables and cantaloupes are taken from the Commission's report in the Citrus League case. The average haul on apples is taken from Exhibit No. 92 in Docket No. 15,137. The average haul on lettuce was secured from the records of the Earl Fruit Company and the Pioneer Fruit Company. Taking into consideration all of the circumstances of transportation, my conclusion is that the gross ton mile earning indicated for deciduous fruits under our proposed

rate is fairly in alignment with the gross ton mile earnings on the other commodities listed. The circumstances of transportation are as follows: The movement of deciduous fruits exceeds the movement in carlots of any other commodity listed in this exhibit; the seasonable persistence of the traffic; deciduous fruit commences to move in volume in June; there is an accession in the number of carloads shipped, reaching the peak from about the middle of September well into November. That is the time of year when the great seasonal movement is on, and the traffic density of the carriers who transport our product is at its highest point. That must result in a lower unit cost of operation. With the exception of apples, deciduous fruit is hauled a greater average distance than any of the other commodities indicated. I believe it to be a sound theory in rate-making that as the distance increases the rate of progressive increase in the gross ton mile rating may decrease.

The next reason is based upon the fact that the deciduous fruit movement is essentially a main line haul. Apples are produced upon the branch lines; so are fresh vegetables, lettuce and cantaloupes. I have also in mind the factor of this movement taking place in what is substantially a train-load service, as indicated in the testimony of Mr. Norris this morning.

[fol. 321] The last element which enters into this analysis would be the question of terminal expense. Having the longest haul of any of these perishables, with the exception of apples (and apples do not move in substantial volume compared to deciduous fruits other than apples), it is our belief that the terminal expense should fade out progressively with the length of haul and be reflected to that extent in the gross ton mile earnings.

The value of the commodity is a factor properly to be considered in the adjustment of the rates. I believe that at the present time deciduous fruits are certainly of lower value than oranges and some of the fresh vegetables.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 31, which is in the following form:

(Here follows Complainant's Exhibit No. 31, marked side folio page 322)

[fol. 322]

COMPLAINANT'S EXHIBIT No. 31

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

Statement Showing Earnings under Proposed Rate on Deciduous Fruits and Earnings under Current Rates on Oranges, Lemons, Apples' Fresh Vegetables, Cantaloupes, and Lettuce, from Points in California, for Average Hauls to Eastern Destinations

Commodity	Rate per 100 lbs. (cents)	Average load	Revenue per car	Avg. haul (miles)	Car-mile earnings (cents)	Net ton-mile earnings (mills)	Gross ton-mile earnings (mills)
Deciduous Fruits	144*	30,000 †	$432.00	2,900	14.8	9.93	3.7
Oranges	155	36,036	558.56	2,545	21.9	12.1	5.1
Lemons	150	29,232	438.48	2,523	17.3	11.8	4.3
Apples	150	37,520	562.80	3,003	18.7	9.99	4.2
Fresh Vegetables	146	22,200	324.12	2,246	14.4	13.0	3.9
Cantaloupes	146	21,900	319.74	2,468	12.9	11.8	3.6
Lettuce	146	24,320	355.07	2,397	14.8	12.1	3.9

* Proposed Rate.

† Estimated.

[fol. 323] In this exhibit there is no factor of empty car haul, nor is there in any of these exhibits so far.

The statement now shown to me, consisting of two sheets, entitled "Statement Showing Carload Rates on Deciduous Fruits Compared with Carload Rates on Other Commodities Named, from California Points to Eastern Groups Named, June 24, 1918, and March 1, 1927," was prepared by me from my general knowledge of the commodities which move under these rates from an exhibit presented before the Commission in I. & S. Docket No. 1779, and from a table published in the report of the Citrus League case. Tariff references are shown in each instance. To the best of my knowledge, the rates are correctly shown, and I believe it to be fairly representative of the rate adjustment of the Eastbound transcontinental rates from California.

Referring to the last column of this exhibit, it will be noted that the percentage increase in the rates on deciduous fruits to all the groups is forty-nine per cent above the rate on June 24, 1918, whereas the average increase on all commodities except deciduous fruits is about twenty-nine per cent. In the case of deciduous fruits, the percentage increase to groups east of Group J is 50.4 per cent, and the preponderance of our tonnage moves to destinations east of Group J. This indicates to my mind that while the carriers have seen fit to leave our rates at the war-time peak, the rates on other commodities moving under this structure, some of which are in a high state of manufacture and extremely valuable, have been reduced to the point where the average increase is but twenty-nine per cent. My further thought in connection with this showing is that this system of reducing the rates on manufactured articles and processed articles to such a marked degree under the percent-

[fol. 324] age increase on our products of the soil, is directly antagonistic to the spirit of the Hoch-Smith Resolution.

Page two of this exhibit shows that the present lumber rate is but 23 per cent above the pre-war rate. I maintain that there is no justice in maintaining rates on lumber which are but 23 per cent higher than the pre-war rates when at the same time you maintain an increase of 50 per cent upon deciduous fruits, which are laboring under a serious depression financially.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 32, which is in the following form:

(Here follows Complainant's Exhibit No. 32, marked side folio pages 325 and 326)

[fol. 327] I have prepared a statement in which I contrast the increase in the rates remaining in effect on westbound transcontinental traffic with the increase remaining in effect on deciduous fruits from California to transcontinental territory. The document now shown to me is a copy of this statement. I made the selection of the rates shown in this exhibit from my general knowledge of the tonnage as it moves under this rate structure. I endeavored here, likewise, to present a fair cross-section of the transcontinental westbound rate structure. The average increase as shown is not a weighted average but a straight average. This exhibit shows that the percentage increase average on all of the commodities listed is but twenty-two per cent above the pre-war rates, whereas the general average increase on deciduous fruits is forty-nine per cent. Here, again, the carriers have consistently reduced the rates on manufactured products, and if we may compare those reductions to the percentage increase which our product is bearing, I believe the method is antagonistic to the spirit of the Hoch-Smith Resolution.

Thereupon there was offered and admitted in evidence Complainant's Exhibit No. 33, which is in the following form:

(Here follows Complainant's Exhibit No. 33, marked side folio pages 328 and 329)

[fol. 330] I have prepared a similar statement dealing with import rates from Pacific ports to Eastern territory. This reflects the best selection which I was able to make of representative import rates and its purpose is similar to that of Exhibits Nos. 32 and 33.

COMPLAINANT'S EXHIBIT No. 32

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

Statement Showing Carload Rates on Deciduous Fruits Compared with Carload Rates on Other Commodities Named, from California Points to Eastern Group Named, June 24, 1918 (T. C. F. B. Tariff I. C. C. 1038), and March 1, 1927 (T. C. F. B. Tariff I. C. C. 1174)

(Rates in Cents per 100 Pounds)

ity	In effect June 24, 1918, from California points — Rates to groups A	B	C	D	E	F	G	H	J	Min. wt. (pounds)	T. C. F. B. tariff 3-M I. C. C. 1038 Sup.	Item	In effect March 1, 1927, from California points — Rates to Groups A	B	C	D	E	F	G	H	J	Min. wt. (pounds)	T. C. F. B. Tariff 3-U, I. C. C. 1174 Sup.	Item	Per cent of increase A	B	C	D
.....	115	115	115	115	115	115	115	115	115	26,000	..	500	173	173	173	173	173	173	173	173	162	26,000	..	1945	50	50	50	50
.....	115	115	115	115	115	115	115	115	115	26,700	..	485	155	155	155	155	155	155	155	155	155	36,000	..	4110	35	35	35	35
.....	100	100	100	100	100	100	100	100	100	26,200	..	490	150	150	150	150	150	150	150	150	141	26,200	..	1935	50	50	50	50
.....	-100	100	100	100	100	100	100	100	100	30,000	..	125	150	150	150	150	150	150	150	150	141	35,000	..	1940	50	50	50	50
.....	-105	105	105	105	105	105	105	105	105	30,000	..	130										31,000			43	43	43	43
)	60	60	60	50	50	50	50	50	35	70,000	30	140-A	90	77½	77½	71½	71½	71½	71½	71½	49½	70,000	1105	& 2725	50	29	29	43
.....	85	85	85	85	85	85	85	85	85	40,000	..	190	128	128	128	128	128	128	128	128	119½	40,000	..	1205	50	50	50	50
.....	75	75	75	75	75	75	75	75	75	60,000	31	195-A	105	105	105	105	105	105	105	105	105	60,000	..	1205	40	40	40	40
.....	85	85	85	85	85	85	85	85	85	40,000	21	260-E	128	128	128	128	128	128	128	128	119½	40,000	3	1390-A	50	50	50	50
.....	72½	72½	72½	72½	72½	72½	72½	72½	72½	60,000	30	265-D	105	105	105	105	105	105	105	105	98	60,000	3	1390-A	45	45	45	45
.....	110	110	110	110	110	110	110	110	110	40,000	30	515-D	165	165	165	165	165	165	165	165	155	40,000	9	1960-A	50	50	50	50
ted)	130	130	130	130	130	130	130	130	130	40,000	30	515-D	195	195	195	195	195	195	195	195	182½	40,000	9	1960-A	50	50	50	50
.....	100	100	100	100	100	100	100	100	100	60,000	30	515-D	125	125	125	125	125	125	125	125	125	60,000	9	1960-A	25	25	25	25
ted)	120	120	120	120	120	120	120	120	120	60,000	30	515-D	145	145	145	145	145	145	145	145	145	60,000	9	1960-A	21	21	21	21
.....	140	140	140	140	140	140	140	140	140	24,000	..	870	175	175	175	175	175	175	175	175	175	30,000	..	2690	25	25	25	25
.....	175	175	175	175	175	175	175	175	175	30,000	..	880	210	210	210	210	210	210	210	210	210	30,000	..	2695	20	20	20	20
													185	185	185	185	185	185	185	185	185	40,000	..	2695	6	6	6	6
gs.)	90	90	90	90	90	90	90	90	90	30,000	..	890	113½	113½	113½	113½	113½	113½	113½	113½	106	30,000	9	2720-B	26	26	26	26
																						70,000	6	1425-A	36			
.....	70	70	70	70	70	70	70	70	70	70,000	..	1085	95															
													...	80	80	80	80	80	80	80	80	77,000	6	1425-A	...	14	14	14
.....	No commodity rate. (See Item 1210.)										..	....	151	135½	128	110	110	110	110	110	106	30,000	9	3500-A	21	18	16	10
etc	125	115	110	100	100	95	95	95	95	20,000	..	1210	175	173	165	146	146	139	139	139	134	20,000	..	3510	40	50	50	46
tc	100	100	100	90	90	85	85	85	85	40,000	..	1005	128	128	128	128	128	128	128	128	119½	40,000	3	1390-A	28	28	28	42
													105	105	105	105	105	105	105	105	98	60,000	3	1390-A	5	5	5	17
-Tanks	No commodity rate. (See Item 1005.)										..	....	150	150	150	85	85	85	85	85	85	R. 3	..	3540	50	50	50	6r
-Brls.	No commodity rate. (See Item 1005.)										..	....	...	...	...	75	75	75	75	75	75	60,000	..	3545	...	...	...	7r
.....	70	65	65	60	60	60	60	60	60	80,000	30	122-A	105	97½	97½	90	90	90	90	90	84½	80,000	..	1065	50	50	50	50
cks)	185	175	170	165	150	150	150	150	150	24,000	31	1290-A	113	113	113	80	80	80	80	80	80	50,000	..	1090	39r	35r	34r	52r
.....	90	90	90	90	90	90	90	90	90	40,000	..	210	135	135	135	135	135	135	135	135	126½	40,000	..	1220	50	50	50	50
.....	80	80	80	80	80	80	80	80	80	40,000	..	225	120	120	120	120	120	120	120	120	112½	40,000	..	1285	50	50	50	50
													97½	97½	97½	97½	97½	97½	97½	97½	92	80,000	..	1285	22	22	22	22
d)	....	....	....	65	65	65	65	65	65	24,000	..	230	.....	.....	.....	97½	97½	97½	97½	97½	92	24,000	..	1445	...	...	...	50
.....	...	...	...	50	50	50	50	50	50	80,000	..	300	...	...	...	59	59	59	59	59	56½	60,000	..	1495	...	...	...	18
n	70	70	70	62½	62½	58	55	55	55	60,000	..	310	91½	91½	91½	72	72	67	64	64	61½	60,000	..	1500	31	31	31	15
.....	60	60	59	50	50	50	50	50	50	50,000	30	635-A	85	85	85	75	75	75	75	75	70	60,000	..	1595	42	42	44	50
.....	75	75	75	75	75	75	75	75	75	60,000	..	365	113	113	113	...	...	...	...	...	...	60,000	9	1665-A	50	50	50	...
													...	...	...	113	113	113	113	113	106	40,000	9	1665-A	...	...	...	50
.....	75	75	75	75	75	75	75	75	75	36,000	31	586-A	113	113	113	113	113	113	113	113	106	36,000	..	1855	50	50	50	50
.....	85	85	85	85	85	85	85	85	85	36,000	31	460-B	128	128	128	128	128	128	128	128	119½	36,000	..	1870	50	50	50	50
.....	75	75	75	75	75	75	75	75	75	40,000	..	1322	113	113	113	113	113	113	113	113	106	40,000	..	2105	50	50	50	50
e)	90	90	90	90	90	90	90	90	75	40,000	..	545	135	135	135	135	135	135	135	135	106	40,000	..	2140	50	50	50	50
.....	85	85	85	85	85	85	85	85	85	30,000	..	560	128	128	128	128	128	128	128	128	119½	30,000	..	2150	50	50	50	50
.....	125	125	125	125	125	125	125	125	125	30,000	..	565	187½	187½	187½	187½	187½	187½	187½	187½	176	30,000	..	2160	50	50	50	50
.....	100	100	100	100	100	100	100	100	100	24,000	..	575	...	...	...	119	114	102	102	102	93½	24,000	..	2195	...	...	...	19
.....	...	...	...	50	50	45	45	45	45	50,000	..	580	...	...	...	73	73	66	66	66	63½	50,000	9	2200-A	...	...	...	60
.....	130	130	130	130	130	130	130	130	130	20,000	..	1330	270	270	270	270	270	270	270	270	270	20,000	..	2220	109	109	109	109
.....	100	100	100	100	100	100	100	100	100	36,000	31	590-A	150	150	150	125	125	125	125	125	125	40,000	..	2225	50	50	50	25
.....	100	100	100	100	100	100	100	100	100	30,000	31	600-A	135	135	135	135	135	135	135	135	135	36,000	..	2250	35	35	35	35
r)	...	...	...	60	60	60	60	60	60	50,000	..	645	...	...	...	60	60	60	60	60	60	60,000	..	2395	...	...	...	...
.....	75	75	75	75	75	75	75	75	75	30,000	..	750	113	113	113	113	113	113	113	113	106	30,000	6	2500-A	50	50	50	5
.....	135	135	135	135	135	135	135	135	135	20,000	5th class		135	75	75	75	75	75	75	75	75	40,000	..	2735	39r	59r	58r	5

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

Statement Showing Carload Rates on Deciduous Fruits Compared with Carload Rates on Other Commodities Named, from California Points to Eastern Named, June 24, 1918 (T. C. F. B. Tariff I. C. C. 1038), and March 1, 1927 (T. C. F. B. Tariff I. C. C. 1174)

(Rates in Cents per 100 Pounds)

Commodity	In effect June 24, 1918, from California points — Rates to groups A	B	C	D	E	F	G	H	J	Min. wt. (pounds)	T. C. F. B. tariff 3-M I. C. C. 1038 Sup.	Item	In effect March 1, 1927, from California points — Rates to Groups A	B	C	D	E	F	G	H	J	Min. wt. (pounds)	T. C. F. Tariff 3- I. C. C. Sup.	Ite
Deciduous Fruits, Fresh	115	115	115	115	115	115	115	115	115	26,000	..	500	173	173	173	173	173	173	173	173	162	26,000	..	19
Citrus Fruits, Fresh	115	115	115	115	115	115	115	115	115	26,700	..	485	155	155	155	155	155	155	155	155	155	36,000	..	41
Lemons, Fresh	100	100	100	100	100	100	100	100	100	26,200	..	490	150	150	150	150	150	150	150	150	141	26,200	..	19
Apples, Fresh	-100	100	100	100	100	100	100	100	100	30,000	..	125	150	150	150	150	150	150	150	150	141	35,000	..	19
Apples (Storage in transit)	-105	105	105	105	105	105	105	105	105	30,000	..	130										31,000		
Asphalt, Asphaltum (Brls.)	60	60	60	50	50	50	50	50	35	70,000	30	140-A	90	77½	77½	71½	71½	71½	71½	71½	49½	70,000	1105	& 2
Beans, dried (Bags)	85	85	85	85	85	85	85	85	85	40,000	..	190	128	128	128	128	128	128	128	128	119½	40,000	..	12
Beans, dried (Bags)	75	75	75	75	75	75	75	75	75	60,000	31	195-A	105	105	105	105	105	105	105	105	105	60,000	..	12
Canned Goods (Boxes)	85	85	85	85	85	85	85	85	85	40,000	21	260-E	128	128	128	128	128	128	128	128	119½	40,000	3	13
Canned Goods (Boxes)	72½	72½	72½	72½	72½	72½	72½	72½	72½	60,000	30	265-D	105	105	105	105	105	105	105	105	98	60,000	3	13
Fruits, dried (Boxes)	110	110	110	110	110	110	110	110	110	40,000	30	515-D	165	165	165	165	165	165	165	165	155	40,000	9	19
Fruits, dried (Sacks or mixed)	130	130	130	130	130	130	130	130	130	40,000	30	515-D	195	195	195	195	195	195	195	195	182½	40,000	9	19
Fruits, dried (Boxes)	100	100	100	100	100	100	100	100	100	60,000	30	515-D	125	125	125	125	125	125	125	125	125	60,000	9	19
Fruits, dried (Sacks or mixed)	120	120	120	120	120	120	120	120	120	60,000	30	515-D	145	145	145	145	145	145	145	145	145	60,000	9	19
Nuts, Edible (Bags)	140	140	140	140	140	140	140	140	140	24,000	..	870	175	175	175	175	175	175	175	175	175	30,000	..	26
Nut Kernels (Bxd.)	175	175	175	175	175	175	175	175	175	30,000	..	880	210	210	210	210	210	210	210	210	210	30,000	..	26
Petroleum & Products (Pkgs.)	90	90	90	90	90	90	90	90	90	30,000	..	890	185	185	185	185	185	185	185	185	185	40,000	..	26
Salmon, Canned (Boxes)	70	70	70	70	70	70	70	70	70	70,000	..	1085	113½	113½	113½	113½	113½	113½	113½	113½	106	30,000	9	27
Vegetables, Fresh (Bags)	No commodity rate. (See Item 1210.)												95									70,000	6	14
Vegetables, Fresh, Melons, etc	125	115	110	100	100	95	95	95	95	20,000	..	....	...	80	80	80	80	80	80	80	80	77,000	6	14
Vinegar in Glass, Boxed, etc	100	100	100	90	90	85	85	85	85	40,000	..	1210	151	135½	128	110	110	110	110	110	106	30,000	9	35
Vinegar & Vinegar Stock—Tanks	No commodity rate. (See Item 1005.)												175	173	165	146	146	139	139	139	134	20,000	..	35
Vinegar & Vinegar Stock—Brls.	No commodity rate. (See Item 1005.)												128	128	128	128	128	128	128	128	119½	40,000	3	13
Alunite (Bags)	70	65	65	60	60	60	60	60	60	80,000	30	122-A	105	105	105	105	105	105	105	105	98	60,000	3	13
Arsenic, Crude or Ref. (Sacks)	185	175	170	165	150	150	150	150	150	24,000	31	1290-A	150	150	150	85	85	85	85	85	85	R. 3	..	35
Benzol (Benzene)	90	90	90	90	90	90	90	90	90	40,000	..	210	...	...	...	75	75	75	75	75	75	60,000	..	35
Borax, Boracic Acid, etc	80	80	80	80	80	80	80	80	80	40,000	..	225	135	135	135	135	135	135	135	135	126½	40,000	..	10
Bottles, Glass (Second hand)	....	...	...	65	65	65	65	65	65	24,000	..	230	120	120	120	120	120	120	120	120	112½	40,000	..	12
Barley	...	...	...	50	50	50	50	50	50	80,000	..	300	97½	97½	97½	97½	97½	97½	97½	97½	92	80,000	..	12
Durra, Feterita, Kafir Corn	70	70	70	62½	62½	58	55	55	55	60,000	..	310	.....	...	...	97½	97½	97½	97½	97½	92	24,000	..	14
Clay, Fullers Earth, Talc	60	60	59	50	50	50	50	50	50	50,000	30	635-A	...	...	...	59	59	59	59	59	56½	60,000	..	14
Copper, sulphate of	75	75	75	75	75	75	75	75	75	60,000	..	365	91½	91½	91½	72	72	67	64	64	61½	60,000	..	15
Fibre, Hemp, Sisal, etc	75	75	75	75	75	75	75	75	75	36,000	31	586-A	85	85	85	75	75	75	75	75	70	60,000	..	15
Fish, dry, salted	85	85	85	85	85	85	85	85	85	36,000	31	460-B	113	113	113	...	...	...	...	...	...	60,000	9	16
Glue Stock (Bags)	75	75	75	75	75	75	75	75	75	40,000	..	1322	...	...	...	113	113	113	113	113	106	40,000	9	16
Grease, axle (not petr. base)	90	90	90	90	90	90	90	90	75	40,000	..	545	113	113	113	113	113	113	113	113	106	36,000	..	18
Hair, not curled	85	85	85	85	85	85	85	85	85	30,000	..	560	135	135	135	135	135	135	135	135	106	40,000	..	21
Hair, cattle tail	125	125	125	125	125	125	125	125	125	30,000	..	565	128	128	128	128	128	128	128	128	119½	30,000	..	21
Hay, tightly compressed	100	100	100	100	100	100	100	100	100	24,000	..	575	187½	187½	187½	187½	187½	187½	187½	187½	176	30,000	..	21
Hay (20 lbs. per cu. ft.)	...	...	...	50	50	45	45	45	45	50,000	..	580	...	...	...	119	114	102	102	102	93½	24,000	..	21
Hides, dry	130	130	130	130	130	130	130	130	130	20,000	..	1330	270	270	270	270	270	270	270	270	270	20,000	..	22
Hides, green	100	100	100	100	100	100	100	100	100	36,000	31	590-A	150	150	150	125	125	125	125	125	125	40,000	..	22
Hoof, strained	100	100	100	100	100	100	100	100	100	30,000	31	600-A	135	135	135	135	135	135	135	135	135	36,000	..	22
Junk (Cloth, Rags, Rubber)	...	...	...	60	60	60	60	60	60	50,000	..	645	...	...	...	60	60	60	60	60	60	60,000	..	23
Wine, Grape Juice	75	75	75	75	75	75	75	75	75	30,000	..	750	113	113	113	113	113	113	113	113	106	30,000	6	25
Oils, Bean, Cocoanut, etc	190	185	180	175	168	160	150	150	140	30,000	5th class		135	75	75	75	75	75	75	75	75	40,000	..	27
Oil, Cocoanut (Crude)	65	60	60	60	60	60	60	60	60	40,000	31	1370-A	105	75	75	75	75	75	75	75	75	40,000	..	27
Alfalfa Products (Meal)	...	...	...	50	50	45	45	45	45	50,000	..	120	...	.....	...	67	67	60	60	60	60	50,000	..	18

[Items marked "r" appear in red on exhibit.]

Three (3) cents per 100 lbs. terminal, via various lines to New York and other Group A points.

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

nt Showing Carload Rates on Deciduous Fruits Compared with Carload Rates on Other Commodities Named, from California Points to Eastern Group Named, June 24, 1918 (T. C. F. B. Tariff I. C. C. 1038), and March 1, 1927 (T. C. F. B. Tariff I. C. C. 1174)

(Rates in Cents per 100 Pounds)

24, 1918, from California points						T. C. F. B. tariff 3-M I. C. C. 1038		In effect March 1, 1927, from California points									T. C. F. B. Tariff 3-U, I. C. C. 1174		Per cent of increase or decrease (red), 1918–1927									
s to groups								Rates to Groups																					
E	F	G	H	J	Min. wt. (pounds)	Sup.	Item	A	B	C	D	E	F	G	H	J	Min. wt. (pounds)	Sup.	Item	A	B	C	D	E	F	G	H	J	Avg. all groups
115	115	115	115	115	26,000	..	500	173	173	173	173	173	173	173	173	162	26,000	..	1945	50	50	50	50	50	50	50	50	41	49%
115	115	115	115	115	26,700	..	485	155	155	155	155	155	155	155	155	155	36,000	..	4110	35	35	35	35	35	35	35	35	35	35%
100	100	100	100	100	26,200	..	490	150	150	150	150	150	150	150	150	141	26,200	..	1935	50	50	50	50	50	50	50	50	41	49%
100	100	100	100	100	30,000	..	125	150	150	150	150	150	150	150	150	141	35,000	..	1940	50	50	50	50	50	50	50	50	41	46%
105	105	105	105	105	30,000	..	130										31,000			43	43	43	43	43	43	43	43	34	
50	50	50	50	35	70,000	30	140–A	90	77½	77½	71½	71½	71½	71½	71½	49½	70,000	1105 & 2725		50	29	29	43	43	43	43	43	41	40%
85	85	85	85	85	40,000	..	190	128	128	128	128	128	128	128	128	119½	40,000	..	1205	50	50	50	50	50	50	50	50	41	49%
75	75	75	75	75	60,000	31	195–A	105	105	105	105	105	105	105	105	105	60,000	..	1205	40	40	40	40	40	40	40	40	40	40%
85	85	85	85	85	40,000	21	260–E	128	128	128	128	128	128	128	128	119½	40,000	3	1390–A	50	50	50	50	50	50	50	50	41	49%
72½	72½	72½	72½	72½	60,000	30	265–D	105	105	105	105	105	105	105	105	98	60,000	3	1390–A	45	45	45	45	45	45	45	45	35	44%
110	110	110	110	110	40,000	30	515–D	165	165	165	165	165	165	165	165	155	40,000	9	1960–A	50	50	50	50	50	50	50	50	41	49%
130	130	130	130	130	40,000	30	515–D	195	195	195	195	195	195	195	195	182½	40,000	9	1960–A	50	50	50	50	50	50	50	50	40	49%
100	100	100	100	100	60,000	30	515–D	125	125	125	125	125	125	125	125	125	60,000	9	1960–A	25	25	25	25	25	25	25	25	25	25%
120	120	120	120	120	60,000	30	515–D	145	145	145	145	145	145	145	145	145	60,000	9	1960–A	21	21	21	21	21	21	21	21	21	21%
140	140	140	140	140	24,000	..	870	175	175	175	175	175	175	175	175	175	30,000	..	2690	25	25	25	25	25	25	25	25	25	20%
175	175	175	175	175	30,000	..	880	210	210	210	210	210	210	210	210	210	30,000	..	2695	20	20	20	20	20	20	20	20	20	25%
								185	185	185	185	185	185	185	185	185	40,000	..	2695	6	6	6	6	6	6	6	6	6	6%
90	90	90	90	90	30,000	..	890	113½	113½	113½	113½	113½	113½	113½	113½	108	30,000	9	2720–B	26	26	26	26	26	26	26	26	18	25%
70	70	70	70	70	70,000	..	1085	95									70,000	6	1425–A	36									16%
								...	80	80	80	80	80	80	80	80	77,000	6	1425–A	...	14	14	14	14	14	14	14	14	
tem 1210.)						..	....	151	135½	128	110	110	110	110	110	106	30,000	9	3500–A	21	18	16	10	10	16	16	16	12	15%
100	95	95	95	95	20,000	..	1210	175	173	165	146	146	139	139	139	134	20,000	..	3510	40	50	50	46	46	46	46	46	41	46%
90	85	85	85	85	40,000	..	1005	128	128	128	128	128	128	128	128	119½	40,000	3	1390–A	28	28	28	42	42	50	50	50	41	40%
								105	105	105	105	105	105	105	105	98	60,000	3	1390–A	5	5	5	17	17	24	24	24	15	15%
tem 1005.)						..	....	150	150	150	85	85	85	85	85	85	R.3	..	3540	50	50	50	6r	6r	...	...	...	...	26%
tem 1005.)						..	....	...	...	...	75	75	75	75	75	75	60,000	..	3545	...	...	...	7r	7r	12r	12r	12r	12r	10%
60	60	60	60	60	80,000	30	122–A	105	97½	97½	90	90	90	90	90	84½	80,000	..	1065	50	50	50	50	50	50	50	50	41	49%r
150	150	150	150	150	24,000	31	1290–A	113	113	113	80	80	80	80	80	80	50,000	..	1090	39r	35r	34r	52r	50r	47r	47r	47r	47r	44%
90	90	90	90	90	40,000	..	210	135	135	135	135	135	135	135	135	126½	40,000	..	1220	50	50	50	50	50	50	50	50	41	49%r
80	80	80	80	80	40,000	..	225	120	120	120	120	120	120	120	120	112½	40,000	..	1285	50	50	50	50	50	50	50	50	41	49%
								97½	97½	97½	97½	97½	97½	97½	97½	92	80,000	..	1285	22	22	22	22	22	22	22	22	15	21%
65	65	65	65	65	24,000	..	230	.....	...	...	97½	97½	97½	97½	97½	92	24,000	..	1445	...	...	...	50	50	50	50	50	32	47%
50	50	50	50	50	80,000	..	300	...	...	...	59	59	59	59	59	56½	60,000	..	1495	...	...	...	18	18	18	18	18	13	17%
62½	58	55	55	55	60,000	..	310	91½	91½	91½	72	72	67	64	64	61½	60,000	..	1500	31	31	31	15	15	16	16	16	12	20%
50	50	50	50	50	50,000	30	635–A	85	85	85	75	75	75	75	75	70	60,000	..	1595	42	42	44	50	50	50	50	50	40	47%
75	7r	75	75	75	60,000	..	365	113	113	113	...	...	...	...	...	...	60,000	9	1665–A	50	50	50	...	...	...	...	...	...	49%
								...	...	...	113	113	113	113	113	106	40,000	9	1665–A	...	...	...	50	50	50	50	50	41	–
75	75	75	75	75	36,000	31	586–A	113	113	113	113	113	113	113	113	106	36,000	..	1855	50	50	50	50	50	50	50	50	41	49%
85	85	85	85	85	36,000	31	460–B	128	128	128	128	128	128	128	128	119½	36,000	..	1870	50	50	50	50	50	50	50	50	41	49%
75	75	75	75	75	40,000	..	1322	113	113	113	113	113	113	113	113	106	40,000	..	2105	50	50	50	50	50	50	50	50	41	49%
90	90	90	90	75	40,000	..	545	135	135	135	135	135	135	135	135	106	40,000	..	2140	50	50	50	50	50	50	50	50	41	49%
85	85	85	85	85	30,000	..	560	128	128	128	128	128	128	128	128	119½	30,000	..	2150	50	50	50	50	50	50	50	50	41	49%
125	125	125	125	125	30,000	..	565	187½	187½	187½	187½	187½	187½	187½	187½	176	30,000	..	2160	50	50	50	50	50	50	50	50	41	49%
100	100	100	100	100	24,000	..	575	...	...	...	119	114	102	102	102	93½	24,000	..	2195	...	...	...	19	14	2	2	2	7r	5%
50	45	45	45	45	50,000	..	580	...	...	...	73	73	66	66	66	63½	50,000	9	2200–A	...	...	...	60	60	47	47	47	41	50%
30	130	130	130	130	20,000	..	1330	270	270	270	270	270	270	270	270	270	20,000	..	2220	109	109	109	109	109	109	109	109	109	109%
00	100	100	100	100	36,000	31	590–A	150	150	150	125	125	125	125	125	125	40,000	..	2225	50	50	50	25	25	25	25	25	25	33%
00	100	100	100	100	30,000	31	600–A	135	135	135	135	135	135	135	135	135	36,000	..	2250	35	35	35	35	35	35	35	35	35	35%
60	60	60	60	60	50,000	..	645	...	...	...	60	60	60	60	60	60	60,000	..	2395	...	...	...	...	...	...	...	...	...	...
75	75	75	75	75	30,000	..	750	113	113	113	113	113	113	113	113	106	30,000	6	2500–A	50	50	50	50	50	50	50	50	41	49%
68	160	150	150	140	30,000	5th class		135	75	75	75	75	75	75	75	75	40,000	..	2735	39r	59r	58r	57r	55r	53r	50r	50r	46r	51%r
60	60	60	60	60	40,000	31	1370–A	105	75	75	75	75	75	75	75	75	40,000	..	2735	62	25	25	25	25	25	25	25	25	29%
50	45	45	45	45	50,000	..	120	...	....	...	67	67	60	60	60	60	50,000	..	1845	.....	...	...	34	34	33	33	33	33	33%

other Group A points.

COMPLAINANT'S EXHIBIT No. 32—Continued

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

Statement Showing Carload Rates on Deciduous Fruits Compared with Carload Rates on Other Commodities Named, from California Points to Eastern Groups Named, June 24, 1918 (T. C. F. B. Tariff I. C. C. 1038), and March 1, 1927 (T. C. F. B. Tariff I. C. C. 1174)

(Rates in Cents per 100 Pounds)

In effect June 24, 1928 from California Points											T. C. F. R. Tariff 3-M I. C. C. 1038		In effect March 1, 1927 from California Points										T. C. F. B. Tariff 3-U I. C. C. 1174		Per cent of increase or decr					
Rates to Groups									Min. wt.			Rates to Groups									Min. Wt.									
A	B	C	D	E	F	G	H	J	(pounds)	Sup.	Item	A	B	C	D	E	F	G	H	J	(pounds)	Sup.	Item	A	B	C	D	E	F
225	220	215	207	200	183	170	170	160	30,000		4th class	...	...	...	86	86	80	80	80	75	30,000	..	1355	...	...	...	58r	57r	56
152	148	145	140	135	123	115	115	107	36,000		Class B	113	113	113	90	90	90	90	90	84½	40,000	..	1615	26r	24r	22r	36r	33r	27
...	...	...	60	60	60	60	60	60	50,000	..	445	...	...	...	90	90	90	90	90	84½	50,000	..	1840	...	...	...	50	50	50
75	75	75	65	65	65	65	65	65	60,000	..	446	90	90	90	78	78	78	78	78	73½	60,000	..	1845	20	20	20	20	20	20
...	...	...	60	60	60	60	60	60	40,000	..	480	...	...	...	85½	85½	79	79	79	76	40,000	..	1805	...	...	...	43	43	32
175	175	175	175	175	175	175	175	175	15,000	..	605	250	250	250	250	250	250	250	250	246½	15,000	..	2260	43	43	43	43	43	43
85	85	85	85	85	85	85	85	85	30,000	..	690	158	143	136	128	128	128	128	128	119½	40,000	..	2465	86	68	60	50	50	50
62½	55	55	50	50	50	50	50	50	80,000	31	790–A	93½	65	62	50	50	50	50	50	50	80,000	..	2595	50	18	13	...	...	...
190	185	180	175	168	160	150	150	140	30,000		5th class	...	...	...	75	75	75	75	75	75	60,000	..	2655	...	...	...	57r	55r	53
...	...	...	60	60	55	55	55	55	60,000	..	840	...	...	...	75	75	69	69	69	69	60,000	..	2660	...	...	...	25	25	25
150	150	150	150	150	150	150	150	150	30,000	..	915	150	150	150	150	150	150	150	150	141	30,000	..	2770	...	...	...	...	...	...
...	...	...	60	60	60	60	60	40	40,000	31	645–A	...	...	...	60	60	60	60	60	60	40,000	..	2395	...	...	...	...	...	...
90	90	90	75	75	65	60	60	60	30,000	..	1010	135	135	135	113	113	90	90	90	84½	30,000	..	2955	50	50	50	50	50	33
...	...	...	55	55	55	55	55	55	50,000	21	1042	105	85	78	70	70	70	70	70	70	50,000	..	3040	...	...	...	27	27	27
75	75	75	75	75	75	75	75	70	40,000	28 31	1402 1068	...	...	...	112½	112½	100	100	100	70	40,000	9	3125–C	...	...	...	50	50	33
85	85	85	85	85	85	85	85	85	40,000	31	1110–A	128	128	128	111½	111½	111½	111½	111½	108	40,000	..	3210	50	50	50	31	31	31
190	185	180	175	168	160	150	150	140	36,000		5th class	117	102	95	87	87	80	80	80	75	40,000	3	3220–A	38r	45r	47r	50r	48r	50
...	...	...	50	50	50	50	50	40	60,000	..	1145	90	90	90	71	71	71	71	71	56½	60,000	..	3275	...	...	...	42	42	42
125	125	125	125	125	125	125	125	125	24,000	..	1445	187½	187½	187½	187½	187½	187½	187½	187½	158	30,000	..	3285	50	50	50	50	50	50
...	...	...	55	55	50	50	50	50	60,000	31	1150–A	74½	74½	74½	50	50	50	50	50	50	80,000	..	3295	...	...	...	9r	9r	...
...	...	...	55	55	50	50	50	50	60,000	31	1150–A	...	...	...	68½	68½	62½	62½	62½	58½	60,000	9	3316–A	...	...	...	25	25	25
...	...	...	73	75	75	75	75	75	–24,000	..	250	151	135½	128	110	110	110	110	110	106	24,000	..	3505	21	18	16	47	47	47
125	115	110	...	...	...	...	...	...	–20,000	..	1210																		
80	80	80	80	80	80	80	80	80	40,000	..	1270	120	120	120	90	90	90	90	90	90	40,000	8	1620–A	50	50	50	13	13	13
200	200	200	200	200	200	200	200	190	24,000	21	245–A	260	260	260	260	260	260	260	260	260	26,000	8	1705–B	30	30	30	30	30	30
85	85	85	85	85	85	85	85	85	40,000	31	1325–A	128	128	93	85	81	77	77	77	77	50,000	9	2115–A	51	51	9	...	5r	...
85	85	85	85	85	85	85	85	85	40,000	..	1403	...	...	...	...	...	87	87	87	78	40,000	..	4895	...	...	...	...	...	...
...	...	...	60	60	60	60	60	60	40,000	...	1065	128	128	128	128	128	...	...	...	...	40,000	..	2890	51	51	51	51	51	...
...	75	70	65	55	55	55	55	55	60,000			...	...	...	90	90	90	90	90	84½	40,000			...	...	...	50	50	50
												90	90	90	83	83	83	83	83	78	60,000	9	3100–A	...	20	29	28	51	33
												...	...	...	...	75	75	75	75	75	80,000			...	...	...	...	...	...

T. C. F. B. Tariff 27-C I. C. C. 1041			T. C. F. B. Tariff 27-J I. C. C. 1172																											
Sup.	Item		Sup.	Item																										
..	20	New York, N. Y.	(Group A)	90		4	252–A																							
		Canton, O.	(Group B)	87		..	256																							
		Fort Wayne, Ind.	(Group C)	84½		..	256																							
		Chicago, Ill.	(Group D)	72		..	260																							
		St. Louis, Mo.	(Group E)	72		..	260	20	9	13	20	31																		
		Houston, Tex.	(Group F)	62½		..	260																							
		Wichita, Kans.	(Group G)	62½		..	262																							
		Fort Worth, Tex.	(Group H)	62½		..	262																							
		Pueblo, Col.	(Group J)	62 51		..	262																							

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

Statement Showing Carload Rates on Deciduous Fruits Compared with Carload Rates on Other Commodities Named, from California Points t
Named, June 24, 1918 (T. C. F. B. Tariff I. C. C. 1038), and March 1, 1927 (T. C. F. B. Tariff I. C. C. 1174)

(Rates in Cents per 100 Pounds)

Commodity	In effect June 24, 1928 from California Points — Rates to Groups A	B	C	D	E	F	G	H	J	Min. wt. (pounds)	T. C. F. R. Tariff 3-M I. C. C. 1038 Sup.	Item	In effect March 1, 1927 from California Points — Rates to Groups A	B	C	D	E	F	G	H	J	Min. Wt. (pounds)	T. I. Sup
Burial Cases	225	220	215	207	200	183	170	170	160	30,000		4th class	...	...	...	86	86	80	80	80	75	30,000	
Copra, Cake and Meal	152	148	145	140	135	123	115	115	107	36,000		Class B	113	113	113	90	90	90	90	90	84½	40,000	
Fertilizers, N. O. S.	...	...	...	60	60	60	60	60	60	50,000	..	445	...	...	...	90	90	90	90	90	84½	50,000	
Animal Manure	75	75	75	65	65	65	65	65	65	60,000	..	446	90	90	90	78	78	78	78	78	73½	60,000	
Feed, Poultry or Stock	...	...	...	60	60	60	60	60	60	40,000	..	480	...	...	...	85½	85½	79	79	79	76	40,000	
Hops (baled)	175	175	175	175	175	175	175	175	175	15,000	..	605	250	250	250	250	250	250	250	250	246½	15,000	
Alcohol	85	85	85	85	85	85	85	85	85	30,000	..	690	158	143	136	128	128	128	128	128	119½	40,000	
Magnesite, crude or calcined	62½	55	55	50	50	50	50	50	50	80,000	31	790-A	93½	65	62	50	50	50	50	50	50	80,000	
Mica, Scrap	190	185	180	175	168	160	150	150	140	30,000		5th class	...	...	...	75	75	75	75	75	75	60,000	
Molasses, residual	...	...	...	60	60	55	55	55	55	60,000	..	840	...	...	...	75	75	69	69	69	69	60,000	
Olives and Olive Oil	150	150	150	150	150	150	150	150	150	30,000	..	915	150	150	150	150	150	150	150	150	141	30,000	
Paper, waste or scrap	...	...	...	60	60	60	60	60	40	40,000	31	645-A	...	...	...	60	60	60	60	60	60	40,000	
Pipe, wooden, and Fixtures	90	90	90	75	75	65	60	60	60	30,000	..	1010	135	135	135	113	113	90	90	90	84½	30,000	
Pumice, unground	...	...	...	55	55	55	55	55	55	50,000	21	1042	105	85	78	70	70	70	70	70	70	50,000	
Roofing, Roofing Material	75	75	75	75	75	75	75	75	70	40,000	28 31	1402 1068	...	...	...	112½	112½	100	100	100	70	40,000	
Seed, Mustard	85	85	85	85	85	85	85	85	85	40,000	31	1110-A	128	128	128	111½	111½	111½	111½	111½	108	40,000	
Separators, battery	190	185	180	175	168	160	150	150	140	36,000		5th class	117	102	95	87	87	80	80	80	75	40,000	
Soda, Nitrate of	...	...	...	50	50	50	50	50	40	60,000	..	1145	90	90	90	71	71	71	71	71	56½	60,000	
Spices, Mustard, etc	125	125	125	125	125	125	125	125	125	24,000	..	1445	187½	187½	187½	187½	187½	187½	187½	187½	158	30,000	
Stone, crushed or ground	...	...	...	55	55	50	50	50	50	60,000	31	1150-A	74½	74½	74½	50	50	50	50	50	50	80,000	
Marble, rough	...	...	...	55	55	50	50	50	50	60,000	31	1150-A	...	...	...	68½	68½	62½	62½	62½	58½	60,000	
Cabbage, Fresh	... 125	... 115	... 110	73	75	75	75	75	75	-24,000 -20,000	..	250 1210	151	135½	128	110	110	110	110	110	106	24,000	
Coffee, green	80	80	80	80	80	80	80	80	80	40,000	..	1270	120	120	120	90	90	90	90	90	90	40,000	
Eggs	200	200	200	200	200	200	200	200	190	24,000	21	245-A	260	260	260	260	260	260	260	260	260	26,000	
Glycerine (Brls.)	85	85	85	85	85	85	85	85	85	40,000	31	1325-A	128	128	93	85	81	77	77	77	77	50,000	
Paper, (Wrapping) Plain	85	85	85	85	85	85	85	85	85	40,000	..	1403	... 128	... 128	... 128	... 128	... 128	87 ...	87 ...	87 ...	78 ...	40,000 40,000	
Rice, Broken Rice, (Bags)	... ...	... 75	... 70	60 65	60 55	60 55	60 55	60 55	60 55	40,000 60,000	...	1065	... 90 ...	... 90 ...	... 90 ...	90 83 ...	90 83 75	90 83 75	90 83 75	90 83 75	84½ 78 75	40,000 60,000 80,000	

Commodity	T. C. F. B. Tariff 27-C I. C. C. 1041 Sup.	Item	A	B	C	D	E	F	G	H	J	Min. wt. (pounds)
Lumber (Coast Group)	..	20	75	80	75	60	55	50	50	50	40-50	30,000

New York, N. Y.	(Group A)	90
Canton, O.	(Group B)	87
Fort Wayne, Ind.	(Group C)	84½
Chicago, Ill.	(Group D)	72
St. Louis, Mo.	(Group E)	72
Houston, Tex.	(Group F)	62½
Wichita, Kans.	(Group G)	62½
Fort Worth, Tex.	(Group H)	62½
Pueblo, Col.	(Group J)	62 51

Average increase, except Deciduous Fruits 29%.
[Items marked "r" appear in red on exhibit.]

COMPLAINANT'S EXHIBIT No. 32—Continued

Witness: Remington

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CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

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t Showing Carload Rates on Deciduous Fruits Compared with Carload Rates on Other Commodities Named, from California Points to Eastern Groups Named, June 24, 1918 (T. C. F. B. Tariff I. C. C. 1038), and March 1, 1927 (T. C. F. B. Tariff I. C. C. 1174)

(Rates in Cents per 100 Pounds)

1928 from California Points						T. C. F. R. Tariff 3-M I. C. C. 1038		In effect March 1, 1927 from California Points										T. C. F. B. Tariff 3-U I. C. C. 1174		Per cent of increase or decrease (red) 1918–1927								
o Groups								Rates to Groups																				
F	G	H	J	Min. wt. (pounds)	Sup.	Item	A	B	C	D	E	F	G	H	J	Min. Wt. (pounds)	Sup.	Item	A	B	C	D	E	F	G	H	J	Avg. all Groups
183	170	170	160	30,000		4th class	...	...	...	86	86	80	80	80	75	30,000	..	1355	...	...	...	58r	57r	56r	53r	53r	53r	55%r
123	115	115	107	36,000		Class B	113	113	113	90	90	90	90	90	84½	40,000	..	1615	26r	24r	22r	36r	33r	27r	22r	22r	21r	26%r
60	60	60	60	50,000	..	445	...	...	...	90	90	90	90	90	84½	50,000	..	1840	...	...	...	50	50	50	50	50	41	49%
65	65	65	65	60,000	..	446	90	90	90	78	78	78	78	78	73½	60,000	..	1845	20	20	20	20	20	20	20	20	13	19%
60	60	60	60	40,000	..	480	...	...	...	85½	85½	79	79	79	76	40,000	..	1805	...	...	...	43	43	32	32	32	27	35%
175	175	175	175	15,000	..	605	250	250	250	250	250	250	250	250	246½	15,000	..	2260	43	43	43	43	43	43	43	43	41	43%
85	85	85	85	30,000	..	690	158	143	136	128	128	128	128	128	119½	40,000	..	2465	86	68	60	50	50	50	50	50	41	56%
50	50	50	50	80,000	31	790–A	93½	65	62	50	50	50	50	50	50	80,000	..	2595	50	18	13	...	...	...	...	...	...	27%
160	150	150	140	30,000		5th class	...	...	...	75	75	75	75	75	75	60,000	..	2655	...	...	...	57r	55r	53r	50r	50r	46r	52%
55	55	55	55	60,000	..	840	...	...	...	75	75	69	69	69	69	60,000	..	2660	...	...	...	25	25	25	25	25	25	25%
150	150	150	150	30,000	..	915	150	150	150	150	150	150	150	150	141	30,000	..	2770	...	...	...	...	...	...	...	...	6r	6%
60	60	60	40	40,000	31	645–A	...	...	...	60	60	60	60	60	60	40,000	..	2395	...	...	...	...	...	...	...	...	50	50%r
65	60	60	60	30,000	..	1010	135	135	135	113	113	90	90	90	84½	30,000	..	2955	50	50	50	50	50	38	50	50	41	48%
55	55	55	55	50,000	21	1042	105	85	78	70	70	70	70	70	70	50,000	..	3040	...	...	...	27	27	27	27	27	27	27%
75	75	75	70	40,000	{28 {31	1402 1068	...	...	...	112½	112½	100	100	100	70	40,000	9	3125–C	...	...	...	50	50	33	33	33	...	40%
85	85	85	85	40,000	31	1110–A	128	128	128	111½	111½	111½	111½	111½	108	40,000	..	3210	50	50	50	31	31	31	31	31	27	37%
160	150	150	140	36,000		5th class	117	102	95	87	87	80	80	80	75	40,000	3	3220–A	38r	45r	47r	50r	48r	50r	47r	47r	46r	46%r
50	50	50	40	60,000	..	1145	90	90	90	71	71	71	71	71	56½	60,000	..	3275	...	...	...	42	42	42	42	42	41	42%
125	125	125	125	24,000	..	1445	187½	187½	187½	187½	187½	187½	187½	187½	158	30,000	..	3285	50	50	50	50	50	50	50	50	26	47%
50	50	50	50	60,000	31	1150–A	74½	74½	74½	50	50	50	50	50	50	80,000	..	3295	...	...	...	9r	9r	...	...	...	...	9%r
50	50	50	50	60,000	31	1150–A	...	...	...	68½	68½	62½	62½	62½	58½	60,000	9	3316–A	...	...	...	25	25	25	25	25	17	24%
75	75	75	75	–24,000	..	250	151	135½	128	110	110	110	110	110	106	24,000	..	3505	21	18	16	47	47	47	47	47	41	37%
...	...	...	...	–20,000	..	1210																						
80	80	80	80	40,000	..	1270	120	120	120	90	90	90	90	90	90	40,000	8	1620–A	50	50	50	13	13	13	13	13	13	25%
200	200	200	190	24,000	21	245–A	260	260	260	260	260	260	260	260	260	26,000	8	1705–B	30	30	30	30	30	30	30	30	37	31%
85	85	85	85	40,000	31	1325–A	128	128	93	85	81	77	77	77	77	50,000	9	2115–A	51	51	9	...	5r	9r	9r	9r	9r	9%r
85	85	85	85	40,000	..	1403	{... {128	... 128	... 128	... 128	... 128	87 ...	87 ...	87 ...	78 ...	40,000 40,000	.. ..	4895 2890	... 51	... 51	... 51	... 51	... 51	2 ...	2 ...	2 ...	8r ...	38% 28%
60	60	60	60	40,000	...	1065	...	...	...	90	90	90	90	90	84½	40,000}			...	...	...	50	50	50	50	50	40	48%
55	55	55	55	60,000			90	90	90	83	83	83	83	83	78	60,000}	9	3100–A	...	20	29	28	51	51	51	51	42	40%
							...	...	...	...	75	75	75	75	75	80,000}			...	...	...	..	...	...	...	...	...	

						T. C. F. B. Tariff 27–C I. C. C. 1041							T. C. F. B. Tariff 27–J I. C. C. 1172																
			40–50			Sup.	Item											Sup.	Item										
50	50	50		30,000	..	20	New York, N. Y.	(Group A)	90									4	252–A										
							Canton, O.	(Group B)	87									..	256										
							Fort Wayne, Ind.	(Group C)	84½									..	256										
							Chicago, Ill.	(Group D)	72									..	260										
							St. Louis, Mo.	(Group E)	72									..	260	20	9	13	20	31	25	25	25	55 2	23%
							Houston, Tex.	(Group F)	62½									..	260										
							Wichita, Kans.	(Group G)	62½									..	262										
							Fort Worth, Tex.	(Group H)	62½									..	262										
							Pueblo, Col.	(Group J)	{62 {51									.. ..	262										

COMPLAINANT'S EXHIBIT No. 33

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

load Rates on Deciduous Fruits from California Points to Eastern Destinations, in Effect June 24, 1918 and March 1, 1927, together with
d Rates on Other Commodities From Eastern Groups to California Terminals, in Effect June 24, 1918 and March 1, 1927

(Rates in Cents per 100 Pounds)

	T. C. F. B. Tariff 3-M I. C. C. 1038			In effect March 1, 1927 from California points — Rates to Groups										T. C. F. B. Tariff 3-U I. C. C. 1174			Per cent of increase 1918-1927									
	Min. Wt. (pounds)	Sup.	Item	A	B	C	D	E	F	G	H	J	Min. Wt. (pounds)	Sup.	Item	A	B	C	D	E	F	G	H	J	Avg. all Groups
	26,000	.....	500	173	173	173	173	173	173	173	173	162	26,000	.....	1945	50	50	50	50	50	50	50	50	41	49%

FOLD OUT IS TOO LARGE TO BE FILMED

[fol. 329]

COMPLAINANT'S EXHIBIT No. 33

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

Statement Showing Carload Rates on Deciduous Fruits From California Points to Eastern Destinations; in Effect June 24, 1918 a
Carload Rates on Other Commodities from Eastern Groups to California Terminals, in Effect June 24, 1918 and

(Rates in Cents per 100 Pounds)

Commodity	In effect June 24, 1918 to California points — From Groups A	B	C	D	E	F	G	H	J	N. Y. Pier	Min. Wt. (pounds)	T. C. F. B. Tariff 1-Q I. C. C. 1048 Sup.	Item	In effect March 1, 1927 to California points — From Groups A	A1	A2	B	C	D	E	F	G	H	J	Min. W (poun
Organs & Pianos	265	250	240	230	225	215	215	213	215	265	12,000	.....	1335	300	300	250	275	263	250	238	225	225	225	225	14,00
Oil, Linseed	110	100	95	90	90	85	85	85	85	110	45,000	1	3230-A	.....	115	80	.....	.....	85	80	80	80	80	80	45,00
Packing H. Prods	160	150	145	140	135	125	125	125	125	160	30,000	.....	3255	275	275	247	261	254	247	240	232	232	232	171	30,00
Paint, dry	110	100	95	90	90	85	85	85	85	110	40,000	.....	3265	155	155	125	140	133	125	119	113	113	113	113	40,00
Printed Matter, NOS	205	195	190	185	180	170	170	170	170	205	30,000	.....	1435	228	228	200	214	207	200	200	200	200	200	200	36,00
Bags, Paper	125	115	110	105	105	100	100	100	100	125	40,000	.....	3285	155	155	125	140	133	125	119	113	113	113	113	40,00
Pails, Plates, paper	160	150	145	140	135	125	125	125	125	160	24,000	.....	3300	192	192	160	176	168	160	152	144	144	144	144	24,00
Boxes, Fibreboard	120	110	105	100	100	95	95	95	95	120	40,000	5	3325-A	155	150	125	140	133	125	119	113	113	113	109	40,00
Napkins, paper	145	135	130	125	120	110	110	110	110	145	26,000	.....	3330	155	155	125	140	133	125	119	113	113	113	113	26,00
Labels, paper	125	115	110	105	105	100	100	100	100	125	40,000	.....	3315	165	165	135	150	143	135	128	122	122	122	122	50,00
Paper, blotting	115	105	100	95	95	90	90	90	90	115	40,000	.....	3345	155	142½	125	140	133	125	119	113	113	113	113	40,00
Paper, writing	125	115	110	105	105	100	100	100	100	125	40,000	.....	3350	155	142½	125	140	133	125	119	113	113	113	113	40,00
														165	165	155	150	143	135	128	122	122	122	122	30,00
Paper, news, poster	110	100	95	90	90	85	85	85	85	110	40,000	5	3355-A	155	135	125	140	133	125	119	113	113	113	113	40,00
Paper, toilet	125	115	110	105	105	100	100	100	100	125	26,000	.....	3360	155	155	125	140	133	125	119	113	113	113	113	26,00
Paper towelling	125	115	110	105	105	100	100	100	100	125	26,000	.....	3360	155	155	125	140	133	125	119	113	113	113	113	26,00
Plumbers' Goods (I & S)	160	150	145	140	135	125	125	125	125	160	30,000	.....	3405	193	193	161	177	169	161	155	143	143	143	143	30,00
Railway Supplies	185	175	170	165	160	150	130	150	140	185	40,000	.....	3495	232	232	195	212	203	193	183	174	174	174	174	40,00
Rail Fastenings	110	100	95	90	85	75	75	75	75	110	60,000	.....	3480	130	130	100	115	108	100	95	90	90	90	77	80,00
Refrigerators	170	160	155	150	145	135	135	135	135	170	18,000	.....	3515	240	200	167	183	175	167	159	150	150	150	150	18,00
Rice & Rice Prods	...	....	....	70	65	60	60	60	60	70	40,000	.....	1605	...	105	105	...	...	105	75	75	75	75	75	40,00
Roofing, paper, felt	115	105	100	95	95	90	90	90	70	115	40,000	.....	3525	140	140	110	125	118	110	105	99	99	99	70	40,00
Soap	115	105	100	95	95	90	90	90	90	115	40,000	.....	3620	173	142½	142½	158	150	142½	142½	135	135	135	126½	40,00
														155	142½	125	140	133	125	119	113	113	113	113	60,00
Sodium (Soda)	...	....	....	90	85	75	75	75	75	90	60,000	.....	3635	130	130	100	115	108	100	95	90	90	90	90	60,00
Starch	120	110	105	100	100	95	95	95	95	120	40,000	.....	3660	150	115	85	135	128	85	81	77	77	77	77	40,00
														115	..	...	100	93	...	...	...	...	...	...	60,00
Sulphur (not ref.)	...	....	....	....	50	50	50	50	50	....	80,000	.....	1710	...	...	...	...	...	...	75	75	75	75	70	80,00
Talking Machines	230	220	215	210	205	195	195	195	195	230	24,000	.....	1715	300	300	250	275	263	250	238	225	225	225	225	24,00
Twine, Cordage	110	100	95	90	90	85	85	85	85	110	40,000	.....	3815	165	135	135	150	142½	125	119	113	113	113	113	40,00
Tin, Pg	135	125	120	115	110	100	100	100	100	135	80,000	.....	3745	203	203	173	187½	180	173	165	150	150	150	141	80,00
Waste, cotton	130	120	115	110	110	105	105	105	105	130	30,000	.....	3880	155	155	125	140	133	125	119	113	113	113	113	30,00
Cable, copper	110	100	95	90	90	85	85	85	85	110	50,000	.....	3900	150	135	120	135	128	120	114	108	108	108	108	50,00
														222	222	185	204	194	185	176	167	167	167	167	30,00
Rods, wire or steel	110	100	95	90	85	75	75	75	75	110	80,000	.....	3930	130	130	100	115	108	100	95	90	90	90	77	80,00
Automobiles, Passgr	330	320	310	300	300	300	300	300	300	330	10,000	5	1865-A	495	495	450	480	465	450	450	450	450	450	422	10,00

Average increase, all groups 22%.
[Items marked "r" appear in red in exhibit.]

[fol. 329]

COMPLAINANT'S EXHIBIT No. 33

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

Statement Showing Carload Rates on Deciduous Fruits From California Points to Eastern Destinations; in Effect June 24, 1918
Carload Rates on Other Commodities from Eastern Groups to California Terminals, in Effect June 24, 1918 and

(Rates in Cents per 100 Pounds)

Commodity	In effect June 24, 1918 to California points — From Groups A	B	C	D	E	F	G	H	J	N. Y. Pier	Min. Wt. (pounds)	T. C. F. B. Tariff 1-Q I. C. C. 1048 Sup.	Item	In effect March 1, 1927 to California points — From Groups A	A1	A2	B	C	D	E	F	G	H	J	Min. (pou
Organs & Pianos	265	250	240	230	225	215	215	213	215	265	12,000	.....	1335	300	300	250	275	263	250	238	225	225	225	225	14,
Oil, Linseed	110	100	95	90	90	85	85	85	85	110	45,000	1	3230-A	.....	115	80	.....	.....	85	80	80	80	80	80	45,
Packing H. Prods	160	150	145	140	135	125	125	125	125	160	30,000	.....	3255	275	275	247	261	254	247	240	232	232	232	171	30,
Paint, dry	110	100	95	90	90	85	85	85	85	110	40,000	.....	3265	155	155	125	140	133	125	119	113	113	113	113	40,
Printed Matter, NOS	205	195	190	185	180	170	170	170	170	205	30,000	.....	1435	228	228	200	214	207	200	200	200	200	200	200	36,
Bags, Paper	125	115	110	105	105	100	100	100	100	125	40,000	.....	3285	155	155	125	140	133	125	119	113	113	113	113	40,
Pails, Plates, paper	160	150	145	140	135	125	125	125	125	160	24,000	.....	3300	192	192	160	176	168	160	152	144	144	144	144	24,
Boxes, Fibreboard	120	110	105	100	100	95	95	95	95	120	40,000	5	3325-A	155	150	125	140	133	125	119	113	113	113	109	40,
Napkins, paper	145	135	130	125	120	110	110	110	110	145	26,000	.....	3330	155	155	125	140	133	125	119	113	113	113	113	26,
Labels, paper	125	115	110	105	105	100	100	100	100	125	40,000	.....	3315	165	165	135	150	143	135	128	122	122	122	122	50,
Paper, blotting	115	105	100	95	95	90	90	90	90	115	40,000	.....	3345	155	142½	125	140	133	125	119	113	113	113	113	40,
Paper, writing	125	115	110	105	105	100	100	100	100	125	40,000	.....	3350	{155 165	142½ 165	125 155	140 150	133 143	125 135	119 128	113 122	113 122	113 122	113 122	40, 30,
Paper, news, poster	110	100	95	90	90	85	85	85	85	110	40,000	5	3355-A	155	135	125	140	133	125	119	113	113	113	113	40,
Paper, toilet	125	115	110	105	105	100	100	100	100	125	26,000	.....	3360	155	155	125	140	133	125	119	113	113	113	113	26,
Paper towelling	125	115	110	105	105	100	100	100	100	125	26,000	.....	3360	155	155	125	140	133	125	119	113	113	113	113	26,
Plumbers' Goods (I & S)	160	150	145	140	135	125	125	125	125	160	30,000	.....	3405	193	193	161	177	169	161	155	143	143	143	143	30
Railway Supplies	185	175	170	165	160	150	130	150	140	185	40,000	.....	3495	232	232	195	212	203	193	183	174	174	174	174	40
Rail Fastenings	110	100	95	90	85	75	75	75	75	110	60,000	.....	3480	130	130	100	115	108	100	95	90	90	90	77	80
Refrigerators	170	160	155	150	145	135	135	135	135	170	18,000	.....	3515	240	200	167	183	175	167	159	150	150	150	150	18
Rice & Rice Prods	...	....	....	70	65	60	60	60	60	70	40,000	.....	1605	...	105	105	...	...	105	75	75	75	75	75	40
Roofing, paper, felt	115	105	100	95	95	90	90	90	70	115	40,000	.....	3525	140	140	110	125	118	110	105	99	99	99	70	40
Soap	115	105	100	95	95	90	90	90	90	115	40,000	.....	3620	{173 155	142½ 142½	142½ 125	158 140	150 133	142½ 125	142½ 119	135 113	135 113	135 113	126½ 113	40 60
Sodium (Soda)	...	....	....	90	85	75	75	75	75	90	60,000	.....	3635	130	130	100	115	108	100	95	90	90	90	90	60
Starch	120	110	105	100	100	95	95	95	95	120	40,000	.....	3660	{150 115	115 ...	85 ...	135 100	128 93	85 ...	81 ...	77 ...	77 ...	77 ...	77 ...	40 60
Sulphur (not ref.)	...	....	....	....	50	50	50	50	50	....	80,000	.....	1710	...	...	...	...	...	...	75	75	75	75	70	80
Talking Machines	230	220	215	210	205	195	195	195	195	230	24,000	.....	1715	300	300	250	275	263	250	238	225	225	225	225	24
Twine, Cordage	110	100	95	90	90	85	85	85	85	110	40,000	.....	3815	165	135	135	150	142½	125	119	113	113	113	113	40
Tin, Pg	135	125	120	115	110	100	100	100	100	135	80,000	.....	3745	203	203	173	187½	180	173	165	150	150	150	141	80
Waste, cotton	130	120	115	110	110	105	105	105	105	130	30,000	.....	3880	155	155	125	140	133	125	119	113	113	113	113	30
Cable, copper	110	100	95	90	90	85	85	85	85	110	50,000	.....	3900	{150 222	135 222	120 185	135 204	128 194	120 185	114 176	108 167	108 167	108 167	108 167	50 30
Rods, wire or steel	110	100	95	90	85	75	75	75	75	110	80,000	.....	3930	130	130	100	115	108	100	95	90	90	90	77	80
Automobiles, Passgr	330	320	310	300	300	300	300	300	300	330	10,000	5	1865-A	495	495	450	480	465	450	450	450	450	450	422	10

Average increase, all groups 22%.
[Items marked "r" appear in red in exhibit.]

COMPLAINANT'S EXHIBIT No. 33

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

g Carload Rates on Deciduous Fruits From California Points to Eastern Destinations; in Effect June 24, 1918 and March 1, 1927, together with
arload Rates on Other Commodities from Eastern Groups to California Terminals, in Effect June 24, 1918 and March 1, 1927

(Rates in Cents per 100 Pounds)

	T. C. F. B. Tariff 1-Q I. C. C. 1048		In effect March 1, 1927 to California points — From Groups												T. C. F. B. Tariff 1-A I. C. C. 1177		Per cent of increase or decrease (red) 1918-1927									
Y. Min. Wt. er (pounds)	Sup.	Item	A	A1	A2	B	C	D	E	F	G	H	J	Min. Wt. (pounds)	Rate Bases	Sup.	Item	A	A1	A2	B	C	D	E	F	G	H	J	Avg. All Groups
12,000	.....	1335	300	300	250	275	263	250	238	225	225	225	225	14,000	1, 2, 3	3	4065-A	13	13	6r	10	10	9	6	5	5	5	5	7%
45,000	1	3230-A	.....	115	80	.....	.....	85	80	80	80	80	80	45,000	2, 3	.....	4170	....	5	27r	....	....	6r	11r	11r	6r	6r	6r	9%r
30,000	.....	3255	275	275	247	261	254	247	240	232	232	232	171	30,000	1, 2, 3	.....	4250	72	72	54	74	75	76	78	86	86	86	37	72%
40,000	.....	3265	155	155	125	140	133	125	119	113	113	113	113	40,000	2, 3	3	4262-A	41	41	14	40	40	39	32	33	33	33	33	34%
30,000	.....	1435	228	228	200	214	207	200	200	200	200	200	200	36,000	1, 2, 3	.....	4290	11	11	2r	10	9	8	11	18	18	18	18	12%
40,000	.....	3285	155	155	125	140	133	125	119	113	113	113	113	40,000	2, 3	.....	4310	24	24	....	22	21	19	13	13	13	13	13	18%
24,000	.....	3300	192	192	160	176	168	160	152	144	144	144	144	24,000	2, 3	.. 3	4330-A	20	20	....	17	16	14	13	15	15	15	15	16%
40,000	5	3325-A	155	150	125	140	133	125	119	113	113	113	109	40,000	2, 3	.....	4360	29	25	4	27	27	25	19	19	19	19	15	21%
26,000	.....	3330	155	155	125	140	133	125	119	113	113	113	113	26,000	2, 3	.....	4450	6	6	14r	4	2	....	1r	3	3	3	3	1%
40,000	.....	3315	165	165	135	150	143	135	128	122	122	122	122	50,000	2, 3	.....	4385	32	32	8	30	30	29	22	22	22	22	22	25%
40,000	.....	3345	155	142½	125	140	133	125	119	113	113	113	113	40,000	2, 3	.....	4420	35	24	9	33	33	32	25	26	26	26	26	27%
40,000	.....	3350	155	142½	125	140	133	125	119	113	113	113	113	40,000	2, 3	.....	4425	24	14	....	22	21	19	13	13	13	13	13	17%
			165	165	155	150	143	135	128	122	122	122	122	30,000	2, 3	.....	4425	32	32	24	30	30	29	22	22	22	22	22	26%
40,000	5	3355-A	155	135	125	140	133	125	119	113	113	113	113	40,000	2, 3	.....	4440	41	23	14	40	40	39	32	33	33	33	33	33%
26,000	.....	3360	155	155	125	140	133	125	119	113	113	113	113	26,000	2, 3	.....	4450	24	24	....	22	21	19	13	13	13	13	13	18%
26,000	.....	3360	155	155	125	140	133	125	119	113	113	113	113	26,000	2, 3	.....	4450	24	24	....	22	21	19	13	13	13	13	13	18%
30,000	.....	3405	193	193	161	177	169	161	155	143	143	143	143	30,000	2, 3	.....	4520	21	21	....	18	17	15	15	14	14	14	14	16%
40,000	.....	3495	232	232	195	212	203	193	183	174	174	174	174	40,000	2, 3	.....	4715	25	25	4	21	19	17	14	16	16	16	24	18%
60,000	.....	3480	130	130	100	115	108	100	95	90	90	90	77	80,000	2, 3	3	4645-A	18	18	9r	15	15	11	12	20	20	20	3	13%
18,000	.....	3515	240	200	167	183	175	167	159	150	150	150	150	18,000	2, 3	.....	2252	41	18	2r	14	13	11	10	11	11	11	11	14%
40,000	.....	1605	...	105	105	...	...	105	75	75	75	75	75	40,000	1, 2, 3	.....	4770	....	50	50	....	....	50	15	25	25	25	25	33%
40,000	.....	3525	140	140	110	125	118	110	105	99	99	99	70	40,000	2, 3	3	4775-A	22	22	4r	19	18	16	11	10	10	10	....	14%
			173	142½	142½	158	150	142½	142½	135	135	135	126½	40,000	2, 3	.....	5000	50	24	24	50	50	50	50	50	50	50	41	44%
40,000	.....	3620	155	142½	125	140	133	125	119	113	113	113	113	60,000	2, 3	.....	5000	35	24	9	33	33	24	25	26	26	26	26	26%
60,000	.....	3635	130	130	100	115	108	100	95	90	90	90	90	60,000	2, 3	.....	5025	....	44	11	....	....	11	12	20	20	20	20	20%
40,000	.....	3660	150	115	85	135	128	85	81	77	77	77	77	40,000	2, 3	.....	5065	25	4r	29r	23	22	15r	19r	19r	19r	19r	19r	7%r
			115	....	...	100	93	...	...	...	...	...	...	60,000	2, 3	.....	5065	4r	....	....	9r	11r	....	....	....	....	....	....	8%r
80,000	.....	1710	...	...	...	...	...	...	75	75	75	75	70	80,000	2, 3	.....	5115	....	....	....	....	....	....	50	50	50	50	40	48%
24,000	.....	1715	300	300	250	275	263	250	238	225	225	225	225	24,000	1, 2, 3	.....	4070	30	30	9	25	22	19	16	15	15	15	15	19%
40,000	.....	3815	165	135	135	150	142½	125	119	113	113	113	113	40,000	2, 3	.....	5395	50	23	23	50	50	39	32	33	33	33	33	36%
80,000	.....	3745	203	203	173	187½	180	173	165	150	150	150	141	80,000	2, 3	.....	5230	50	50	28	50	50	50	50	50	50	50	41	47%
30,000	.....	3880	155	155	125	140	133	125	119	113	113	113	113	30,000	2, 3	10	5545-A	19	19	4r	17	16	14	8	8	8	8	8	11%
50,000	.....	3900	150	135	120	135	128	120	114	108	108	108	108	50,000	2, 3	7	5590-A	36	23	9	35	35	33	27	27	27	27	27	28%
			222	222	185	204	194	185	176	167	167	167	167	30,000	2, 3	7	5590-A	101	101	68	104	104	106	96	96	96	96	96	97%
80,000	.....	3930	130	130	100	115	108	100	95	90	90	90	77	80,000	2, 3	8	5620-A	18	18	9r	15	14	11	12	20	20	20	3	13%
10,000	5	1865-A	495	495	450	480	465	450	450	450	450	450	422	10,000	1, 2, 3	.....	5505	50	50	36	50	50	50	50	50	50	50	41	48%

[Vol. 65]

COMPLAINANT'S EXHIBIT No. 34

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

Statement Showing Carload Rates on Deciduous Fruits from California Points in Eastern Defined Territory Compared with Import Carload Rates on Commodities from Pacific Coast Ports to Eastern Territory When Originating at Asiatic and Other Points Named in T. C. F. B. Import Tariffs 26-F. I. C. C. 1046 (1918), 30-0, I. C. C. 1176 (1927, and Supplements Thereto, June 24, 1928, and March 1, 1927).

(Rates in Cents per 100 Pounds)

From California Points to Groups Named

Commodity	In effect June 24, 1918: Rates to groups A to J	Min. wt. (pounds)	T. C. F. B. tariff I. C. C. 1038, item	In effect March 1, 1927: Rates to groups A to H, K, L, M	Rates to groups J	Min. wt. (pounds)	T. C. F. B. Tariff I. C. C. 1174 Sup.	Item	Average Increase, 1918–1927
Deciduous Fruits, Fresh	115	26,000	500	173	162	26,000		1945	49%

From San Francisco and Other Pacific Coast Ports to Points in United States and Canada Named in T. C. F. B. I. C. C. 1046 and Supplements thereto.

From San Francisco and Other Pacific Coast Ports to Points Rate Basis 2 (New York) Rate Basis 3 (Cleveland, Buffalo), Rate Basis 4 (Chicago, Omaha, Denver), Named in T. C. F. B. I. C. C. 1176 and Supplements Thereto.

Commodity	Rates to groups A	B	D	F	G	Min. wt. (pounds)	T. C. F. B. tariff I. C. C. 1046, item	Rates to rate bases 2	3	4	Min. wt. (pounds)	T. C. F. B. tariff I. C. C. 1176 Sup.	Item	Average increase or decrease (red) 1918–1927
Bagging, Burlap	74	65½	55	55	55	40,000	30	90	90	65	40,000	..	210	34%
Bamboo	125	125	125	125	125	24,000	30	180	180	180	30,000	4	215-C	44%
Beans, dried, NOS	85	85	85	85	85	40,000	50	128	128	128	40,000	..	230	50%
Bulbs, Plants	100	100	100	100	100	24,000	70	175	175	175	20,000	..	245	75%
Camphor, Crude	100	100	100	100	100	30,000	65	180	180	170	30,000	..	270	76%
Chinaware, Crock	100	100	100	100	100	24,000	225	125	125	125	24,000	5	285-D	25%
Cocoanut, Desicated	100	100	100	100	100	30,000	150	145	145	145	30,000	..	300	45%
Hemp, Sisal (bales)	60	60	55	55	55	40,000	345	85	85	85	40,000	..	370	50%
Oranges (Bxs. Crts.)	115	115	115	115	115	26,700	505	173	173	173	26,700	..	395	50%
Glassware, NOS (Bxs.)	100	100	100	100	100	24,000	290	180	180	165	24,000	..	415	75%
Graphite Ore	115	112	106	93	80	50,000	*Class D	100	100	100	60,000	..	420	**1%
Gum, Copal	90	90	90	90	90	30,000	310	120	120	100	50,000	..	430	26%
Hides, Green or Salt	100	100	100	100	100	30,000	355	125	125	100	36,000	..	450	16%
Kapok (Bales)	125	125	125	125	125	20,000	377	140	140	140	30,000	..	460	12%
Lumber, Hardwood	80	75	55	50	40	60,000	435	96	96	75	40,000	..	485 & 495	46%
Matting (Pkgs.)	110	110	110	110	110	20,000	445	150	150	150	24,000	..	500	45%
Nuts, Edible (Pkgs.)	140	140	140	140	140	24,000	465	175	175	175	30,000	..	515	25%
Oil, Nut or Seed	75	75	75	75	75	30,000	475	105	75	75	40,000	..	529	13%
Rattan, Natl. form	110	110	110	110	110	36,000	570	135	125	125	36,000	..	570	16%
Rubber, Crude	75	75	75	75	75	30,000	585	100	100	100	30,000	..	575	33%
Sago (Pkgs.)	90	90	90	90	90	40,000	595	110	110	110	40,000	..	585	22%
Seed (Pkgs.)	100	100	100	100	100	40,000	615	150	150	150	30,000	4	600-A	50%
Skins & Hides	100	100	100	100	100	20,000	650	240	240	200	20,000	..	625	126%
Spices, Condiments	80	80	80	80	80	30,000	675	150	150	100	30,000	4	645-A	66%
Tea (Pkgs.)	110	110	110	110	110	24,000	700	150	150	150	24,000	..	675 & 680	36%
Tin, Bar, Pig, etc	56.2	56.2	56.2	56.2	56.2	50,000	715	90	90	75	50,000	..	700	50%
Wax, Paraffine	150	150	150	150	150	30,000	555	-113½	113½	113½	-30,000	..	720	**24%
								- 80	80	80	-50,000	..	720	**47%
Woodenware	150	150	150	150	150	16,000	725	225	225	225	16,000	..	725	50%
Wool in grease	75	75	75	75	75	24,000	740	125	125	125	30,000	..	740	66%
Wool, scoured	106	106	106	106	106	24,000	745	150	150	150	20,000	..	745	42%
Wrappers, Bottle	100	100	100	100	100	30,000	750	150	150	150	30,000	..	750	50%
Zinc Ore	...	...	50	50	50	50,000	760	72	72	72	80,000	..	755	44%
Tallow, Vegetable	75	75	75	75	75	50,000	695	150	150	150	50,000	..	665	100%
													Average Increase	41%

*T. C. F. B. Tariff I. C. C. 1038, Page 115.
**Red in Copy.
Minimum 50,000 to Rate Basis 4.

[fol. 333]

COMPLAINANT'S EXHIBIT No. 35

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

Statement Showing Carload Rates on Deciduous Fruits from California Points to Eastern Territory, Compared With Carload Rates on Westbound Commodities for Export, from Eastern Groups Named to Pacific Ports, When Consigned Through to Yokohama and Other Asiatic Ports

June 24, 1918 and March 1, 1927

T. C. F. B. Tariffs Eastbound I. C. C. 1038 (1918) and I. C. C. 1174 (1927)

T. C. F. B. Tariffs Export I. C. C. 625 and 1048 (1918)—and I. C. C. 1162 (1927)

(Rates in Cents per 100 Pounds)

	In effect June 24, 1918					In effect March 1, 1927			
	From California Points to Groups Named Below								
			T. C. F. B. Tariff	Rates to Groups			T. C. F. B. Tariff		
Commodity	Rates to Groups A to J	Min. Wt. (pounds)	I. C. C. 1038 Item	A to H K, L, M	J	Min. Wt. (pounds)	I. C. C. 1174 Sup.	I. C. C. 1174 Item	Per cent of rate increase or decrease (red) 1918-1927
Deciduous Fruits, Fresh	115	26,000	500	173	162	26,000	.....	1945	49%

From Groups Named to California Ports for Export

Commodity	Rates from Groups B and C	Min. Wt. (pounds)	T. C. F. B. Tariffs I. C. C.	Sup.	Item	Rates from Rate Bases 2 and 3	Min. Wt. (pounds)	T. C. F. B. Tariff I. C. C. 1162 Sup.	Item	Per cent of rate increase or decrease (red) 1918-1927
Agricultural Impts.	72	30,000	625	18	10-D	100	30,000	.....	215	39%
Bottles, Glass	100 (a)	30,000	1048	.....	2465	125	30,000	.....	245	25%
Barytes, Limestone, etc.	112 (a)	40,000	1048	Page 97	Class D	84	60,000	.....	230	33%r
Canned Goods (Boxes)	75	40,000	625	18	60-C	120	40,000	.....	255	60%
Chocolate (Boxed)	150 (a)	30,000	1048	5	2250-A	165	30,000	.....	270	10%
Dry Goods (Bxs. Bales)	115 (a)	40,000	1048	.....	2320	144	30,000	.....	295	25%
Glass, Plate	70	40,000	625	.....	122	110 (2) 90 (3)	50,000	.....	315	57% 29%
Glass, Window, Common	70	40,000	625	.....	122	100 (2) 90 (3)	50,000	.....	320	43% 29%
Glass, Mirror or Shock	200	24,000	625	1	3rd Class	162	40,000	.....	325	19%r
Grading & Roadmaking Impts.	187 (c)	24,000	1048	Page 97	Class A	115	36,000	.....	330	38%r
Ink, in glass (Bxd.)	125 (a)	30,000	1048	.....	2745	*110	30,000	2	340-A	12%r
Iron & Steel Articles	50	80,000	625	.....	140	72	80,000	14	345-D	44%
Castings, Iron or Steel	100 (a)	50,000	1048	.....	2885	84	50,000	.....	350	16%r
Cast Iron Pipe & Conns.	45	60,000	625	.....	315	72	60,000	.....	355	60%
	60	.....	.....	.....	.....	.....	.....	.....	.....	20%
Rails, Iron or Steel	50	80,000	625	.....	140	60	80,000	.....	360	38%
Ironware, Enameled, NOS.	145 (a)	22,000	1048	.....	3755	195	30,000	.....	405	34%
Lime, Acetate of (Sacks)	55	50,000	625	.....	210	72	50,000	5	425-A	31%
Machinery & Machines	187 (a)	30,000	1048	Class A	1265	115	36,000	7	430-C	38%r
Machines, Sewing, K. D.	75	30,000	625	.....	248	115	30,000	.....	435	53%
Milk, Condensed (Bxd.)	75	40,000	625	18	60-C	120	40,000	.....	450	60%
Motor Cycles (Bxs. Crts.)	275	12,000	625	1	Class One	275	12,000	.....	460	.....
Oil, Lubricating	145 (a)	40,000	1048	.....	3235	108	30,000	.....	470	25%r
Oil Well Supplies	187	36,000	1048	Page 97	Class A	115	36,000	.....	480	38%r
Paint	65	40,000	625	.....	275	80	40,000	.....	485	23%
Paper & Articles of Paper	65	40,000	625	.....	280	100	40,000	.....	490	54%
Plumbers' Goods	100	36,000	625	.....	335	140	30,000	.....	510	40%
RAILWAY EQUIPMENT										
Locomotives, K. D.	65	40,000	625	.....	220	87½	40,000	.....	530	35%
Pass. & Frt. Cars, K. D.	†59.6	40,000	625	17	147-B	87½	40,000	.....	525	47%
Roofing Matl. (Paper &c)	65	40,000	625	.....	355	100	40,000	14	541-D	54%
Soap (Pkgs.)	60	40,000	625	.....	380	115	40,000	.....	565	92%
Spelter (Zinc)	100 (a)	40,000	1048	.....	3985	90	40,000	.....	580	10%r
Mfgd. (Pkgs.)	225 (a)	30,000	1048	.....	3775	110	40,000	12	605-A	51%r

Statement Showing Carload Rates on Deciduous Fruits from California Points to Eastern Territory, Compared With Carload Rates on Westbound Commodities for Export, from Eastern Groups Named to Pacific Ports, When Consigned Through to Yokohama and Other Asiatic Ports

June 24, 1918 and March 1, 1927
T. C. F. B. Tariffs Eastbound I. C. C. 1038 (1918) and I. C. C. 1174 (1927)

T. C. F. B. Tariffs Export I. C. C. 625 and 1048 (1918)—and I. C. C. 1162 (1927)

(Rates in Cents per 100 Pounds)

	In effect June 24, 1918					In effect March 1, 1927			
	From California Points to Groups Named Below								
Commodity	Rates to Groups A to J	Min. Wt. (pounds)	T. C. F. B. Tariff I. C. C. 1038 Item	Rates to Groups A to H K, L, M	J	Min. Wt. (pounds)	T. C. F. B. Tariff I. C. C. 1174 Sup.	Item	Per cent of rate increase or decrease (red) 1918-1927
Deciduous Fruits, Fresh	115	26,000	500	173	162	26,000	.....	1945	49%

From Groups Named to California Ports for Export

Commodity	Rates from Groups B and C	Min. Wt. (pounds)	T. C. F. B. Tariffs I. C. C.	Sup.	Item	Rates from Rate Bases 2 and 3	Min. Wt. (pounds)	T. C. F. B. Tariff I. C. C. 1162 Sup.	Item	Per cent of rate increase or decrease (red) 1918-1927
Agricultural Impts.	72	30,000	625	18	10-D	100	30,000	.....	215	39%
Bottles, Glass	100 (a)	30,000	1048	.....	2465	125	30,000	.....	245	25%
Barytes, Limestone, etc.	112 (a)	40,000	1048	Page 97	Class D	84	60,000	.....	230	33%r
Canned Goods (Boxes)	75	40,000	625	18	60-C	120	40,000	.....	255	60%
Chocolate (Boxed)	150 (a)	30,000	1048	5	2250-A	165	30,000	.....	270	10%
Dry Goods (Bxs. Bales)	115 (a)	40,000	1048	.....	2320	144	30,000	.....	295	25%
Glass, Plate	70	40,000	625	.....	122	110 (2) 90 (3)	50,000	.....	315	57% 29%
Glass, Window, Common	70	40,000	625	.....	122	100 (2) 90 (3)	50,000	.....	320	43% 29%
Glass, Mirror or Shock	200	24,000	625	1	3rd Class	162	40,000	.....	325	19%r
Grading & Roadmaking Impts.	187 (a)	24,000	1048	Page 97	Class A	115	36,000	.....	330	38%r
Ink, in glass (Bxd.)	125 (a)	30,000	1048	.....	2745	*110	30,000	2	340-A	12%r
Iron & Steel Articles	50	80,000	625	.....	140	72	80,000	14	345-D	44%
Castings, Iron or Steel	100 (a)	50,000	1048	.....	2885	84	50,000	.....	350	16%r
Cast Iron Pipe & Conns.	45	60,000	625	.....	315	72	60,000	.....	355	60%
	60	.....	.....	.....	.....	.....	.....	.....	.....	20%
Rails, Iron or Steel	50	80,000	625	.....	140	69	80,000	.....	360	38%
Ironware, Enameled, NOS.	145 (a)	22,000	1048	.....	3755	195	30,000	.....	405	34%
Lime, Acetate of (Sacks)	55	50,000	625	.....	210	72	50,000	5	425-A	31%
Machinery & Machines	187 (a)	30,000	1048	Class A	1265	115	36,000	7	430-C	38%r
Machines, Sewing, K. D.	75	30,000	625	.....	248	115	30,000	.....	435	53%
Milk, Condensed (Bxd.)	75	40,000	625	18	60-C	120	40,000	.....	450	60%
Motor Cycles (Bxs. Crts.)	275	12,000	625	1	Class One	275	12,000	.....	460	.....
Oil, Lubricating	145 (a)	40,000	1048	.....	3235	108	30,000	.....	470	25%r
Oil Well Supplies	187	36,000	1048	Page 97	Class A	115	36,000	.....	480	38%r
Paint	65	40,000	625	.....	275	80	40,000	.....	485	23%
Paper & Articles of Paper	65	40,000	625	.....	280	100	40,000	.....	490	54%
Plumbers' Goods	100	36,000	625	.....	335	140	30,000	.....	510	40%
RAILWAY EQUIPMENT										
Locomotives, K. D.	65	40,000	625	.....	220	87½	40,000	.....	530	35%
Pass. & Frt. Cars, K. D.	†59.6	40,000	625	17	147-B	87½	40,000	.....	525	47%
Roofing Matl. (Paper &c)	65	40,000	625	.....	355	100	40,000	14	541-D	54%
Soap (Pkgs.)	60	40,000	625	.....	380	115	40,000	.....	565	92%
Spelter (Zinc)	100 (a)	40,000	1048	.....	3985	90	40,000	.....	580	10%r
Tobacco, Mfgd. (Pkgs.)	225 (a)	30,000	1048	.....	3775	110	40,000	12	605-A	51%r
Tobacco, Umfgd. Domestic	175 (a)	20,000	1048	.....	3780	150	20,000	.....	615	14%r
Vehicles, Self-Propel.	320 (a)	10,000	1048	.....	1865	210	15,000	.....	635	34%r
Automobiles, Passenger	225	12,000	625	.....	25	175	20,000	.....	640	22%r
Wheelbarrows, K. D.	75	40,000	625	.....	450	132	24,000	.....	670	76%
Wood Pulp	60	40,000	625	.....	480	90	40,000	.....	675	50%
Zinc (Plate or Slab)	160 (a)	40,000	1048	.....	1945	85	60,000	.....	685	47%r
									Average Increase	18%

(a) From Group B only.
† Detroit, Mich. and Jefferson, Ind. only.
* From points on C. I. & W. and C. I. & L. Railways.
[Items marked "r" appear in red on exhibit.]

[fol. 335]

COMPLAINANT'S EXHIBIT No. 36

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL

Statement Showing Carload Rates on Commodities Named From California Terminals to New York, N. Y., via Southern Pacific, Galveston, Harrisburg and San Antonio Ry., via Galveston, Tex., Thence Southern Pacific Co. Atlantic Steamship Lines (Morgan Line), in Effect June 24, 1918 (T. C. F. B. Tariff 3-M, I. C. C. 1038, and Supplements) and March 1, 1927 (T. C. F. B. Tariff 3-U, I. C. C. 1174, and Supplements)

(Rates in Cents per 100 lbs.)

	In effect June 24, 1918 from California Terminals				In effect March 1, 1927, from Oakland, San Diego, San Pedro, Richmond, San Francisco and Wilmington, Cal.				
			T. C. F. B. Tariff 3-M I. C. C. 1038				T. C. F. B. Tariff 3-U I. C. C. 1174		
Commodity	Rates to N. Y.	Min. Wt. (pounds)	Sup.	Item	Rates to N. Y.	Min. Wt. (pounds)	Sup.	Item	Per cent of Increase or Decrease (red) 1918-1927
Asphalt, Asphaltum (Bbls.)	50	70,000	30	140-A	70	80,000	.....	3740	40%
Beans, dried (Bags)	85	40,000	.....	190	70	80,000	.....	3765	17.6%r
	75	60,000	31	195-A					6.6%r
Canned Goods (Boxed)	85	40,000	9	260-B	70	80,000	.....	3845	17.6%r
	72½	60,000	9	265-B					3.4%r
Fruits, dried (Boxes)	110	40,000	9	515-B	80	60,000	.....	4105	37.5%r
	100	60,000	9	515-B					20%r
Fruits, dried (Sacks)	130	40,000	9	515-B	100	60,000	.....	4105	23%r
	120	60,000	9	515-B					16.6%r
Fruits, dried (Bxs. and Sacks mixed)	130	40,000	9	515-B	100	60,000	.....	4105	23%r
	120	60,000	9	515-B					16.6%r
Rice (Bags)	60	60,000	.....	1065	70	80,000	.....	5030	16.6%
Nuts, Edible (Bags)	140	24,000	.....	870	175	30,000	.....	2690	25%
Nut Kernels (Bxd.)	175	30,000	.....	880	210	30,000	.....	2695	20%
Petroleum & Products	90	30,000	.....	890	113½	30,000	.....	2720	26.1%
Salmon, Canned	70	70,000	.....	1085	95	70,000	6	1425-A	35.7%
								Average Decrease	1.2%r

[Items marked "r" appear in red in Exhibit.]

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 34, which is in the following form:

(Here follows Complainant's Exhibit No. 34, marked side folio page 331)

[fol. 332] I have prepared a further statement dealing in the same manner with the westbound rates for export from eastern groups to Pacific ports, of which the document now shown to me is a copy. I think that both the export and import rates are bound to be representative because I have taken practically every commodity listed in the tariffs providing the rates. This exhibit shows that the average increase on articles for export is 18 percent, as against our increase of 49 percent.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 35, which is in the following form:

(Here follows Complainant's Exhibit No. 35, marked side folio page 333)

[fol. 334] The statement now shown to me is a statement of similar character which presents the rates in effect on various commodities from California terminals to New York via the Sunset-Gulf route of the Southern Pacific Company, and is again representative of that rate structure. Comparing the rates in effect on March 1, 1927, on these commodities with those in effect on June 24, 1918, we find that there is an average decrease of 1.2 percent below the rates in effect before the war.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 36, which is in the following form:

(Here follows Complainant's Exhibit No. 36, marked side folio page 335)

[fol. 336] I have prepared a similar statement showing representative rates on coal and livestock in the Pacific Coast and intermountain territories, of which the document

now shown to me is a copy. These rates are fairly representative of the changes which have taken place in the rate structure on these commodities since June 24, 1918.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 37, which is in the following form:

(Here follows Complainant's Exhibit No. 37, marked side folio page 337)

[fol. 338] I have prepared a further statement presenting the rate structure on ores and concentrates in the Pacific Intermountain States to compare the increase remaining in effect above the June 24th, 1918, rates, with the increased rates upon deciduous fruits.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 38, which is in the following form:

(Here follows Complainant's Exhibit No. 38, marked side folio pages 339 and 340)

[fol. 341] Thereupon there was offered and admitted in evidence, a statement showing comparison of earnings per car and per car per mile on vinegar under current rate of 75 cents per 100 pounds, with other representative commodities from Pacific Coast points to eastern distinations, which was presented by Witness Trammell for respondent carriers in I & S Docket 1779, and which was brought down to date as to the rates.

Thereupon the said exhibit was offered and admitted in evidence as Complainant's Exhibit No. 39, which is in the following form:

(Here follows Complainant's Exhibit No. 39, marked side folio page 342)

[fol. 343] The Exhibits 32 to 39, which have been admitted in evidence, are presented not to compare rates with rates, but to show the trend of the rate levels in the territories covered by these exhibits. They do show in the transcontinental movement eastbound a substantial percentage reduction from the rates in effect June 25, 1918, and that there has been no relative corresponding reduction in the rates on deciduous fruits. The same is likewise true as to the rates in the exhibit covering the movement of commodities

[fol. 337]

COMPLAINANT'S EXHIBIT No. 37

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Statements Showing Carload Rates on Various Commodities as Shown in Headings Below in Effect June 2
Carload Rates on Bituminous Coal from Colorado, Wyoming and Utah Points to California De

(Rates in Cents per Ton of 2,000 Pounds)

In Effect June 24, 1918

To	From New Castle, Colo. Slack	Run of Mine	Minimum Weight	From Castle Gate, Utah Slack	Run of Mine	Minimum Weight	D. & R. G. I. C. C. No.
San Francisco, Calif.	715	715	40,000	530	530	/60,000	2520
Sacramento, Calif.	715	715	40,000	530	530	/60,000	2520
Fresno, Calif.	830	855	40,000	630	630	/60,000	2520
In effect March 1, 1927							
San Francisco, Calif.	615	700	40,000	515	600	/60,000	179
Sacramento, Calif.	615	700	40,000	515	600	/60,000	179
Fresno, Calif.	700	700	40,000	600	600	/60,000	-179 -Sup. 9
Percentage of Rate Increase or *Decrease 1918-							
San Francisco, Calif.	*14%	*2%		*3%	13%		
Sacramento, Calif.	*14%	*2%		*3%	13%		
Fresno, Calif.	*16%	*18%		*5%	*5%		
Average	*15%	*7%		*4%	10%		

/ Applies on cars of 80,000 capacity.
* Red in copy.

Carload Rates on Livestock Between Oakland, Calif., and Nevada-Ut

(Rates in dollars per standard car)

Between Oakland, Calif., and	In effect June 24, 1918 Cattle	Hogs S-D	Sheep S-D	W. P. I. C. C. 131 Index No.	In effect Cattle	Hogs S-D
Bronte, Nev.	$86.00	$55.50	$55.50	630	$112.00	$78.50
Winnemucca, Nev.	94.50	62.50	62.50	710	112.00	81.00
Bliss, Nev.	95.50	63.50	63.50	718	118.00	87.50
Carlin, Nev.	102.50	66.50	66.50	790	118.00	92.00
Barro, Utah	127.00	82.50	82.50	920	138.00	97.50
						Average Incr

Carload Rates on Livestock Between San Francisco, Calif., and Oreg

(Rates in dollars per standard car)

Between San Francisco and	In effect June 24, 1918 Cattle	Hogs S-D	Sheep S-D	S. P. I. C. C. 3429 Sup. 12 Item No.	In effect Mar Cattle	Hogs S-D
Eugene, Ore.	$106.00	$83.00	$83.00	18	$121.00	$98.00
Roseburg, Ore.	106.00	83.00	83.00	18	121.00	98.00
Medford, Ore.	94.00	71.00	71.00	16	118.00	94.50
						Average Incr

[fol. 337]

COMPLAINANT'S EXHIBIT No. 37

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL

Statements Showing Carload Rates on Various Commodities as Shown in Headings Below in Effect June 24, 1918 and March 1, 1927
Carload Rates on Bituminous Coal from Colorado, Wyoming and Utah Points to California Destinations Named

(Rates in Cents per Ton of 2,000 Pounds)

In Effect June 24, 1918

To	From New Castle, Colo. Slack	Run of Mine	Minimum Weight	From Castle Gate, Utah Slack	Run of Mine	Minimum Weight	D. & R. G. Tariff I. C. C. No.	Index	From Rock Springs, Wyo. Slack	Run of Mine	Minimum Weight	O. S. L. Tariff I. C. C. No.	Index
San Francisco, Calif.	715	715	40,000	530	530	/60,000	2520	6915	530	530	50,000	2074	427
Sacramento, Calif.	715	715	40,000	530	530	/60,000	2520	5270	530	530	50,000	2074	473
Fresno, Calif.	830	855	40,000	630	630	/60,000	2520	5465	630	630	50,000	2074	609
In effect March 1, 1927													
												U. P. Tariff	
San Francisco, Calif.	615	700	40,000	515	600	/60,000	179	3270	515	600	50,000	3552	2382
Sacramento, Calif.	615	700	40,000	515	600	/60,000	179	3885	515	600	50,000	3552	3498
Fresno, Calif.	700	700	40,000	600	600	/60,000	-179 -Sup. 9	5840	600	600	50,000	3552	2654
Percentage of Rate Increase or *Decrease 1918–1927													
San Francisco, Calif.	*14%	*2%		*3%	13%				*3%	13%			
Sacramento, Calif.	*14%	*2%		*3%	13%				*3%	13%			
Fresno, Calif.	*16%	*18%		*5%	*5%				*5%	*5%			
Average	*15%	*7%		*4%	10%				*4%	10%			

/ Applies on cars of 80,000 capacity.
* Red in copy.

Carload Rates on Livestock Between Oakland, Calif., and Nevada-Utah Points Named

(Rates in dollars per standard car)

Between Oakland, Calif., and	In effect June 24, 1918 Cattle	Hogs S-D	Sheep S-D	W. P. I. C. C. 131 Index No.	In effect March 1, 1927 Cattle	Hogs S-D	Sheep S-D	W. P. I. C. C. 310 Index No.	Percentage of Increase 1918–1927 Cattle	Hogs S-D	Sheep S-D
Bronte, Nev.	$86.00	$55.50	$55.50	630	$112.00	$78.50	$78.50	635	30%	43%	43%
Winnemuoca, Nev.	94.50	62.50	62.50	710	112.00	81.00	81.00	715	19	29	29
Bliss, Nev.	95.50	63.50	63.50	718	118.00	87.50	87.50	875	24	38	38
Carlin, Nev.	102.50	66.50	66.50	790	118.00	92.00	92.00	945	16	38	38
Barro, Utah	127.00	82.50	82.50	920	138.00	97.50	97.50	1075	9	18	18
						Average Increase			20%	33%	33%

Carload Rates on Livestock Between San Francisco, Calif., and Oregon Points Named

(Rates in dollars per standard car)

Between San Francisco and	In effect June 24, 1918 Cattle	Hogs S-D	Sheep S-D	S. P. I. C. C. 3429 Sup. 12 Item No.	In effect March 1, 1927 Cattle	Hogs S-D	Sheep S-D	S. P. I. C. C. 4569 Item No.	Percentage of Increase 1918–1927 Cattle	Hogs S-D	Sheep S-D
Eugene, Ore.	$106.00	$83.00	$83.00	18	$121.00	$98.00	$98.00	590	12%	18%	18%
Roseburg, Ore.	106.00	83.00	83.00	18	121.00	98.00	98.00	470	12	18	18
Medford, Ore.	94.00	71.00	71.00	16	118.00	94.50	94.50	345	26	25	25
						Average Increase			17%	20%	20%

[fol. 339]

COMPLAINANT'S EXHIBIT No. 38

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL

Statement Showing Carload Rates on Ore and Concentrates (Based upon Value) Between Points in Pacific-Intermountain States in Effect June 24, 1918 and March 1,1927

(Rates in cents per ton of 2,000 pounds)

From	To	Value per Net Ton										Minimum Weight	Item	Tariff	I. C. C. No.	Average Increase 1918-1927
		$20	$30	$40	$50	$60	$70	$75	$80	$90	$100					
Wabuska, Nev.	Midvale, Utah															
	1918	400	500	500	600	650	700	.....	750	795	820	40,000	1100	PFTB 33-E	331	
	1927	510	580	650	720	790	860	.....	930	990	1040	40,000	2840	" 33-K	816	
	Increase (%)	27%	16%	30%	20%	22%	23%	.....	20%	25%	27%					23%
Bovine, Utah	U. S. Smelter, Utah															
	1918	200	250	300	325	340	360	.....	375	390	400	40,000	1330	" 33-E	331	
	1927	281	349	428	461	484	506	.....	529	551	563	40,000	2740	" 33-K	816	
	Increase (%)	40%	39%	42%	42%	42%	41%	.....	41%	41%	41%					41%
Cobre, Nev.	Garfield, Utah															
	1918	300	360	415	400	460	475	.....	490	510	525	40,000	1300	" 33-E	331	
	1927	320	370	420	470	520	570	.....	620	670	720	40,000	2710	" 33-K	816	
	Increase (%)	7%	3%	1%	7%	13%	20%	.....	26%	31%	37%					16%
Goldfield, Nev.	Garfield, Utah															
	1918	400	500	550	600	650	700	.....	750	800	850	40,000	850	" 33-E	331	
	1927	510	580	650	720	790	860	.....	930	1000	1070	40,000	655	" 33-K	816	
	Increase (%)	27%	16%	18%	20%	22%	23%	.....	24%	25%	26%					22%
Goldfield, Nev.	Wabuska, Nev.															
	1918	.....	249	301	340	409	423	.....	444	465	485	40,000	720	" 33-E	331	
	1927	.....	310	380	430	510	530	.....	560	580	610	40,000	1760	" 33-K	816	
	Increase (%)	.....	27%	26%	26%	25%	25%	.....	29%	24%	26%					26%
Engels, Calif.	Garfield, Utah															
	1918	635	665	700	750	800	850	.....	900	950	1000	40,000	200	WP 16-C	151	
	1927	785	810	835	860	885	910	.....	935	960	985	40,000	460	" 16-F	293	
	Increase (%)	24%	22%	19%	15%	11%	7%	.....	4%	1%	1%*					13%
Hackstaff, Cal.	Garfield, Utah															
	1918	430	465	500	575	615	650	.....	675	700	700	40,000	160	" 16-C	151	
	1927	500	550	600	690	740	790	.....	835	860	885	40,000	300-A	" 16-F	293	
	Increase (%)	16%	18%	20%	20%	20%	22%	.....	24%	21%	26%			(Sup. 1)		21%
Sulphur, Nev.	Garfield, Utah															
	1918	420	455	490	560	600	630	.....	650	675	700	40,000	155	WP 16-C	151	
	1927	500	550	600	650	700	750	.....	800	850	885	40,000	320-C	" 16-F	293	
	Increase (%)	19%	21%	22%	16%	17%	19%	.....	38%	26%	26%			(Sup. 10)		23%
Winnemucca, Nev.	Garfield, Utah															
	1918	400	440	475	540	575	610	.....	630	650	675	40,000	150	WP 16-C	151	
	1927	500	550	600	650	700	750	.....	800	850	885	40,000	330	" 16-F	293	
	Increase (%)	25%	25%	26%	20%	22%	23%	.....	27%	31%	31%					25%
Duncan, Ariz.	El Paso, Tex.															
	1918	175	200	225	250	.....		300	.....		350	60,000	2150	PFTB 11-E	298	
	1927	220	250	280	310	.....		370	.....		430	60,000	1975	SP 160-F	4536	
	Increase (%)	26%	25%	24%	24%	.....		23%	.....		23%					24%

[* Red in copy.]

[fol. 340]

COMPLAINANT'S EXHIBIT No. 38—Continued

Witness: Remington

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL

Statement Showing Carload Rates on Ore and Concentrates (Based upon Value) Between Points in Pacific-Intermountain States in Effect June 24, 1918 and March 1, 1927

(Rates in cents per ton of 2,000 pounds)

From	To	Value per Net Ton										Minimum Weight	Item	Tariff	I. C. C. No.	Average Increase or *Decrease 1918-1928
		$20	$30	$40	$50	$60	$70	$75	$80	$90	$100					
Gleeson, Ariz.	El Paso, Tex.															
	1918	200	225	250	275			325			375	60,000	2140	PFTB 11-E	298	
	1927	260	290	320	350			410			470	60,000	1974	SP 160-F	4536	
	Increase (%)	30%	29%	28%	27%			26%			26%					28%
Glove, Ariz.	Douglas, Ariz.															
	1918	250	275	305	355			425			480	60,000	2350	PFTB 11-E	298	
	1927	230	260	290	320			380			440	60,000	1975	SP 160-F	4536	
	Decrease (%)	8%*	5%*	5%*	10%*			11%*			8%*					8%*
Skull Vy. Ariz.	Hayden, Ariz.															
	1918	250	300		350			410			500	60,000	2240	PFTB 11-E	298	
	1927	290	340	375	415	455		505	565		575	60,000	3350	" 11-I	800	
	Increase (%)	16%	13%		19%			23%			15%					17%
Gleeson, Ariz.	Hayden, Ariz.															
	1918	250	275	300	325			375			425	60,000	2260	" 11-E	298	
	1927	240	270	300	330			390			450	60,000	1974	SP 160-F	4536	
	Inc. or Decr. (%)	4%*	2%*		2%			4%			6%					1%
Mohawk, Ariz.	Hayden, Ariz.															
	1918	200	225	250	275			325			375	60,000	2280	PFTB 11-E	298	
	1927	240	270	300	330			410			450	60,000	1971-A	SP 160-F	5436	
	Increase (%)	20%	20%	20%	20%			26%			20%					21%
Bisbee, Ariz.	Globe, Ariz.															
	1918	250	275	305	355			425		455	480	60,000	2350	PFTB 11-E	298	
	1927	310	340	380	440			530		570	600	60,000	1930-A	SP 160-F	4536	
	Decrease (%)	24%	24%	25%	24%			25%		25%	25%					25%
Copper, Ariz.	Douglas, Ariz.															
	1918	480	550		630			750			900	60,000	2220	PFTB 11-E	298	
	1927	600	700		790			940			1000	60,000	3290	" 11-I	800	
	Increase (%)	25%	25%		25%			25%			12%					22%
Copper, Ariz.	Hayden, Ariz.															
	1918	305	350		405			475			575	60,000	2245	" 11-E	298	
	1927	310	365	415	465	515		565	610	655	700	60,000	3365-A	" 11-I	800	
	Increase (%)	2%	4%		15%			19%			22%			(Sup. 19)		12%
Goldfield, Nev.	Selby, Calif.															
	1918	400	500	550	600	650	700		750	800	850	40,000	560	PFTB 33-E	331	
	1927	510	580	650	720	790	860		930	1000	1070	40,000	650	" 33-K	816	
	Increase (%)	27%	16%	18%	20%	22%	23%		24%	25%	26%					24%
														General Average increase		20%

* Decrease. [Show red on copy.]

[Fol. 342]

COMPLAINANT'S EXHIBIT No. 39

Witness: Remington

(Copy of Exhibit No. 4, Witness Trammell, introduced by Respondent Carriers in I. & S. Docket No. 1779, 81 I. C. C. 666)

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL

Statement Showing Comparison of Earnings per Car and per Car per Mile on Vinegar under Current Rate of 75 Cents per 100 Pounds, with Other Representative Commodities from Pacific Coast Points to Eastern Destinations

(Rates in Effect March 1, 1927)

From San Francisco, Calif.,

Commodity	To Chicago, Ill. (2260 Miles)			To St. Louis, Mo. (2166 Miles)			To Kansas City, Mo. (1869 Miles)			To Denver, Colo. (1372 Miles)			Minimum Carload Weight	T. C. F. B. Tariff 3-U I. C. C. 1174	
	Rate per 100 lbs. (cents)	Earnings Per Car	Earnings Per Car Per Mile	Rate per 100 lbs. (cents)	Earnings Per Car	Earnings Per Car Per Mile	Rate per 100 lbs. (cents)	Earnings Per Car	Earnings Per Car Per Mile	Rate per 100 lbs. (cents)	Earnings Per Car	Earnings Per Car Per Mile		Sup.	Item
Vinegar	75	$450	19.9	75	$450	20.8	75	$450	23.8	75	$450	32.8	60,000	.....	3546
Vegetable Oils	75	300	13.3	75	300	13.8	75	300	15.9	75	300	21.9	40,000	.....	2735
Alfalfa Meal	67	335	14.8	67	335	15.5	60	300	15.9	60	300	21.9	50,000	.....	1046
Borax, Crude	120	480	21.2	120	480	22.1	120	480	25.4	112½	450	32.8	40,000	.....	1285
	97½	780	34.5	97½	780	36.	97½	780	41.3	92	736	53.6	80,000	.....	1285
Lumber	72	216	9.6	72	216	10.	62½	188	9.9	51	153	11.2	30,000	.....	260 & 262 (I. C. C. 1172)
Burial Cases	86	258	11.4	86	258	11.9	80	240	12.7	75	225	16.4	30,000	.....	1355
Infusorial Earth	75	450	19.9	75	450	20.8	75	450	23.8	70	420	30.7	60,000	.....	1695
Copra Cake and Meal	90	360	15.9	90	360	16.6	90	360	19.1	84½	338	24.7	40,000	.....	1615
Fertilizer	90	450	19.9	90	450	20.8	90	450	23.8	84½	423	39.9	50,000	.....	1840
Fibre, Hemp, etc.	113	407	18.	113	407	18.8	113	407	21.5	106	382	27.9	36,000	.....	1855
Fish, dry, salted, etc.	128	461	20.9	128	461	21.2	128	461	24.4	119½	430	31.4	36,000	.....	1870
Feed, Poultry or Stock	85½	342	15.1	85½	342	15.8	79	316	16.7	76	304	22.1	40,000	.....	1805
Citrus Fruits	155	558	24.7	155	558	25.8	155	558	29.5	155	558	40.7	36,000	.....	4110
Lemons	150	393	17.3	150	393	18.1	150	393	20.8	141	369	27.	26,200	.....	1935
Apples	150	465	20.	150	465	21.5	150	465	24.7	141	437	31.9	31,000	.....	1940
	150	525	23.2	150	525	24.2	150	525	27.8	141	493.50	36.	35,000	.....	1940
Deciduous Fruits	173	450	19.9	173	450	20.8	173	450	28.8	162	421	30.7	26,000	.....	1945
Hides, Dry	270	540	23.9	270	540	24.9	270	540	28.6	270	540	39.4	20,000	.....	2220
Honey, strained	135	486	21.3	135	486	22.4	135	486	25.8	135	486	35.5	36,000	.....	2250
Hops	250	375	16.6	250	375	17.3	250	375	19.9	246½	370	27.	15,000	.....	2260
Junk	60	360	15.9	60	360	16.6	60	360	19.1	60	360	26.2	60,000	.....	2395
Paper, scrap	60	360	15.9	60	360	16.6	60	360	19.1	60	360	26.2	60,000	.....	2395
Alcohol	105	420	18.6	105	420	19.4	105	420	22.3	105	420	30.7	40,000	8	2480-A
	85	595	26.3	85	595	27.5	85	595	31.5	85	595	43.3	70,000	8	2480-A
Wine	113	339	15.	113	339	15.6	113	339	18.	106	318	23.2	30,000	6	2500-A
Lumber, built-up or veneered	107	428	18.9	107	428	19.8	107	428	22.7	101½	406	29.6	40,000	.....	2530
Magenaite	50	400	17.7	50	400	18.5	50	400	21.2	50	400	29.2	80,000	.....	2595
Mica, scrap	75	450	19.9	75	450	20.8	75	450	23.8	75	450	32.8	60,000	.....	2655
Molasses	60	360	15.9	57	342	15.8	50	300	15.9	50	300	21.9	60,000 (Tank Cars)	9	2665-A
Olives and Olive Oil	150	450	19.9	150	450	20.8	150	450	23.8	141	423	39.9	30,000	.....	2770
	125	750	33.2	125	750	34.6	125	750	39.7	125	750	54.7	60,000	.....	2770
Pipe, wooden	113	339	15.	113	339	15.7	90	270	14.3	84½	253.50	18.5	30,000	.....	2955
Pumice, unground	70	350	15.5	70	350	16.2	70	350	18.5	70	350	25.5	50,000	.....	3040
Roofing	112½	450	19.9	112½	450	20.8	100	400	21.2	70	280	20.4	40,000	9	3125-C
Battery Separators	87	348	15.4	87	348	16.1	80	320	17.	75	300	21.9	40,000	3	3220-A
Soda, Nitrate of	71	426	18.8	71	426	19.6	71	426	22.6	56½	339	24.7	60,000	.....	3275
Spices	187½	562.50	24.9	187½	562.50	26.	187½	562.50	29.8	158	474	34.5	30,000	.....	3285
Stone, crushed or ground	50	400	17.7	50	400	18.5	50	400	21.2	50	400	29.2	80,000	.....	3295
Marble, rough	68½	411	18.2	68½	411	18.9	62½	375	19.9	58½	351	25.6	60,000	3	3316
Vegetables (Bags)	110	330	14.6	110	330	15.2	110	330	17.5	106	318	23.2	30,000	9	3500-A
Cabbage	110	264	11.7	110	264	12.1	110	264	14.	106	254	18.6	24,000	.....	3505
Vegetables, fresh	146	292	12.9	146	292	13.5	139	278	14.7	134	268	19.5	20,000	8	3510-A

COMPLAINANT'S EXHIBIT No. 39

Witness: Remington

(Copy of Exhibit No. 4, Witness Trammell, introduced by Respondent Carriers in I. & S. Docket No. 1779, 81 I. C. C. 666)

INTERSTATE COMMERCE COMMISSION

DOCKET No. 19130

CALIFORNIA GROWERS AND SHIPPERS PROTECTIVE LEAGUE

vs.

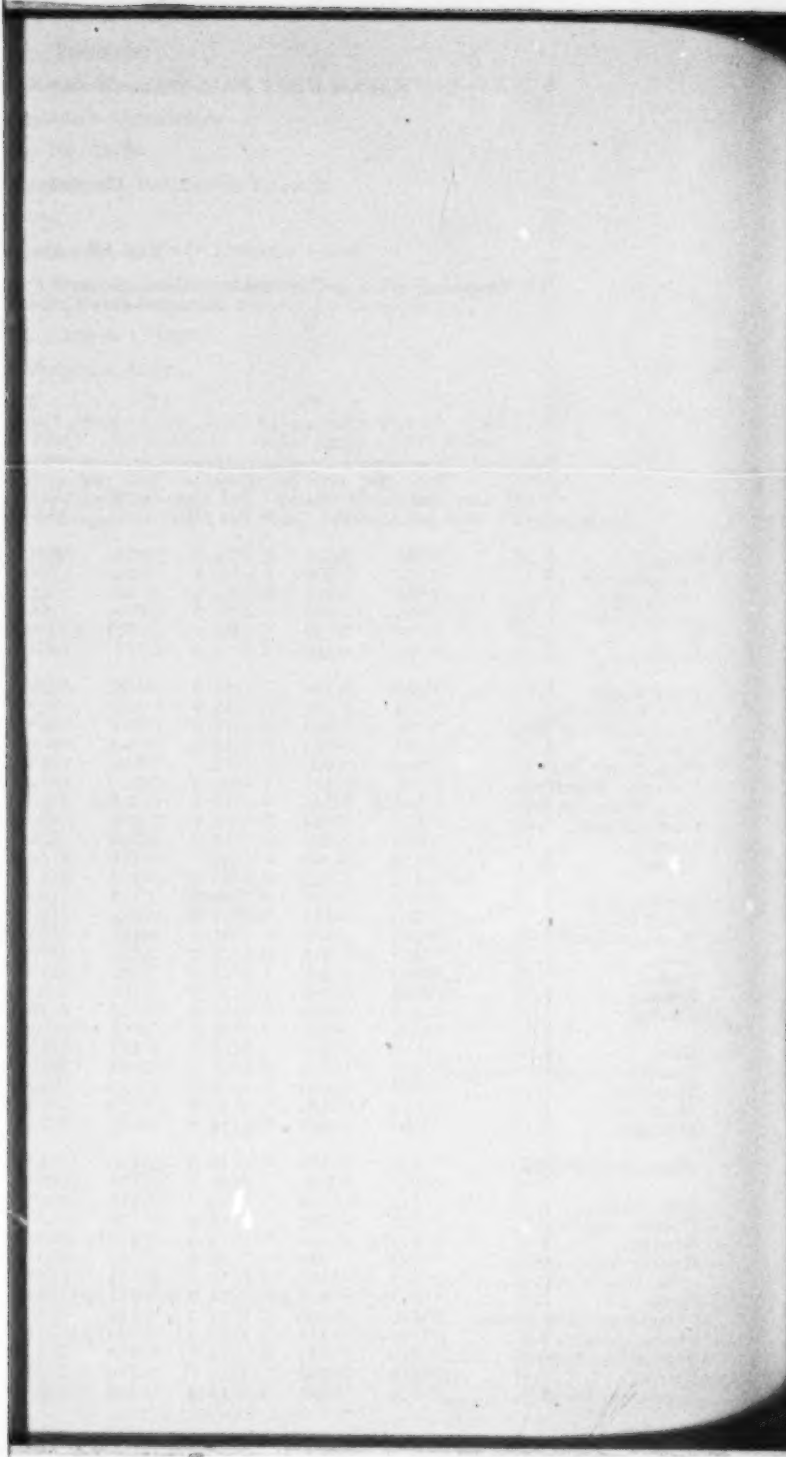
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL

Statement Showing Comparison of Earnings per Car and per Car per Mile on Vinegar under Current Rate of 75 Cents per 100 Pounds, with Other Representative Commodities from Pacific Coast Points to Eastern Destinations

(Rates in Effect March 1, 1927)

From San Francisco, Calif.,

Commodity	To Chicago, Ill. (2260 Miles)			To St. Louis, Mo. (2166 Miles)			To Kansas City, Mo. (1869 Miles)			To Denver, Colo. (1372 Miles)			Minimum Carload Weight	T. C. F. B. Tariff 3-U I. C. C. 1174	
	Rate per 100 lbs. (cents)	Earnings Per Car	Earnings Per Car Per Mile	Rate per 100 lbs. (cents)	Earnings Per Car	Earnings Per Car Per Mile	Rate per 100 lbs. (cents)	Earnings Per Car	Earnings Per Car Per Mile	Rate per 100 lbs. (cents)	Earnings Per Car	Earnings Per Car Per Mile		Sup.	Item
Vinegar	75	$450	19.9	75	$450	20.8	75	$450	23.8	75	$450	32.8	60,000	.....	3546
Vegetable Oils	75	300	13.3	75	300	13.8	75	300	15.9	75	300	21.9	40,000	.....	2735
Alfalfa Meal	67	335	14.8	67	335	15.5	60	300	15.9	60	300	21.9	50,000	.....	1046
Borax, Crude	120	480	21.2	120	480	22.1	120	480	25.4	112½	450	32.8	40,000	.....	1285
	97½	780	34.5	97½	780	36.	97½	780	41.3	92	736	53.6	80,000	.....	1285
Lumber	72	216	9.6	72	216	10.	62½	188	9.9	51	153	11.2	30,000	.....	260 & 262 (I. C. C. 1172)
Burial Cases	86	258	11.4	86	258	11.9	80	240	12.7	75	225	16.4	30,000	.....	1355
Infusorial Earth	75	450	19.9	75	450	20.8	75	450	23.8	70	420	30.7	60,000	.....	1695
Copra Cake and Meal	90	360	15.9	90	360	16.6	90	360	19.1	84½	338	24.7	40,000	.....	1615
Fertilizer	90	450	19.9	90	450	20.8	90	450	23.8	84½	423	39.9	50,000	.....	1840
Fibre, Hemp, etc.	113	407	18.	113	407	18.8	113	407	21.5	106	382	27.9	36,000	.....	1855
Fish, dry, salted, etc.	128	461	20.9	128	461	21.2	128	461	24.4	119½	430	31.4	36,000	.....	1870
Feed, Poultry or Stock	85½	342	15.1	85½	342	15.8	79	316	16.7	76	304	22.1	40,000	.....	1805
Citrus Fruits	155	558	24.7	155	558	25.8	155	558	29.5	155	558	40.7	36,000	.....	4110
Lemons	150	393	17.3	150	393	18.1	150	393	20.8	141	369	27.	26,200	.....	1935
Apples	150	465	20.	150	465	21.5	150	465	24.7	141	437	31.9	31,000	.....	1940
	150	525	23.2	150	525	24.2	150	525	27.8	141	493.50	36.	35,000	.....	1940
Deciduous Fruits	173	450	19.9	173	450	20.8	173	450	28.8	162	421	30.7	26,000	.....	1945
Hides, Dry	270	540	23.9	270	540	24.9	270	540	28.6	270	540	39.4	20,000	.....	2220
Honey, strained	135	486	21.3	135	486	22.4	135	486	25.8	135	486	35.5	36,000	.....	2250
Hops	250	375	16.6	250	375	17.3	250	375	19.9	246½	370	27.	15,000	.....	2260
Junk	60	360	15.9	60	360	16.6	60	360	19.1	60	360	26.2	60,000	.....	2395
Paper, scrap	60	360	15.9	60	360	16.6	60	360	19.1	60	360	26.2	60,000	.....	2395
Alcohol	105	420	18.6	105	420	19.4	105	420	22.3	105	420	30.7	40,000	8	2480-A
	85	595	26.3	85	595	27.5	85	595	31.5	85	595	43.3	70,000	8	2480-A
Wine	113	339	15.	113	339	15.6	113	339	18.	106	318	23.2	30,000	6	2500-A
Lumber, built-up or veneered	107	428	18.9	107	428	19.8	107	428	22.7	101½	406	29.6	40,000	.....	2530
Magnesite	50	400	17.7	50	400	18.5	50	400	21.2	50	400	29.2	80,000	.....	2595
Mica, scrap	75	450	19.9	75	450	20.8	75	450	23.8	75	450	32.8	60,000	.....	2655
Molasses	60	360	15.9	57	342	15.8	50	300	15.9	50	300	21.9	60,000 (Tank Cars)	9	2665-A
Olives and Olive Oil	150	450	19.9	150	450	20.8	150	450	23.8	141	423	39.9	30,000	.....	2770
	125	750	33.2	125	750	34.6	125	750	39.7	125	750	54.7	60,000	.....	2770
Pipe, wooden	113	339	15.	113	339	15.7	90	270	14.3	84½	253.50	18.5	30,000	.....	2955
Pumice, ungrouud	70	350	15.5	70	350	16.2	70	350	18.5	70	350	25.5	50,000	.....	3040
Roofing	112½	450	19.9	112½	450	20.8	100	400	21.2	70	280	20.4	40,000	9	3125-C
Battery Separators	87	348	15.4	87	348	16.1	80	320	17.	75	300	21.9	40,000	3	3220-A
Soda, Nitrate of	71	426	18.8	71	426	19.6	71	426	22.6	56½	339	24.7	60,000	.....	3275
Spices	187½	562.50	24.9	187½	562.50	26.	187½	562.50	29.8	158	474	34.5	30,000	.....	3285
Stone, crushed or ground	50	400	17.7	50	400	18.5	50	400	21.2	50	400	29.2	80,000	.....	3295
Marble, rough	68½	411	18.2	68½	411	18.9	62½	375	19.9	58½	351	25.6	60,000	3	3316
Vegetables (Bags)	110	330	14.6	110	330	15.2	110	330	17.5	106	318	23.2	30,000	9	3500-A
Cabbage	110	264	11.7	110	264	12.1	110	264	14.	106	254	18.6	24,000	.....	3505
Vegetables, fresh	146	292	12.9	146	292	13.5	139	278	14.7	134	268	19.5	20,000	8	3510-A



between points in the Intermountain territory. These exhibits are intended to show that deciduous fruits are bearing a disproportionate share of the increased rate burden.

If a 30,000 pound minimum becomes effective on grape traffic, the result will be a loading of not less than 30,000 pounds average on all varieties of deciduous fruits. Grapes are generally loaded to about 31,000 pounds, and sometimes the loading reaches as high as 36,000 pounds. The average loading on tree fruits at the present time is about 26,400 pounds. Grapes last year formed about seventy-eight per cent of our total tonnage, and if we take a given number of cars approximating the movement of all fruit, and apply the weight of 31,000 pounds to 78 per cent of those cars and 26,400 pounds to the remaining 22 per cent, the average load which will be obtained will be very close to 30,000 pounds. It is my opinion that with the increased minimum we can safely rely upon an average load of 31,000 pounds of grapes. Assuming an average load of 30,000 pounds per car, there will be an increase in carload revenue above the pre-war carload revenue, if the $1.44 rate is granted, of approximately forty per cent. I arrive at the percentage of 40 per cent by taking the carload revenue on the current [fol. 344] shipments and contrasting that with 30,000 pounds at $1.44. The approximate pre-war carload revenue was about $300.00, determined on 26,000 pounds at $1.15. The average carload revenue under the $1.44 rate with an average load of 30,000 pounds would be $432.00, an increase of $132.00 per car.

Our reasons for requesting the rate of $1.44 per 100 pounds are, first, because that rate is a 25 percent increase over the rates of June 24, 1918, and the rates in the transcontinental rate structure are now about 25 percent above those in effect prior to the Director General's order; under this rate structure now in effect the carriers, at least those which move our traffic, are showing the best earnings that they have shown for many years; and second, the fact that in Express Rates, 1922, the Commission removed all of the 1920 advances in those rates, bringing them down to a basis 27.6% higher than those in effect on June 24, 1918.

The making of rates for deciduous fruits should be influenced by the fact that it moves at the period of highest

traffic density when the great seasonal movement of California products is under way and the carriers' operating costs and unit costs must be at the lowest possible figure. The factor of lengthened fruit train schedules is of significance to the extent that the carriers generally insist that the more expedited a schedule is, the more expensive it is to maintain. The schedule has been increased to 154 hours as against 138 hours when the $1.15 rate was in effect, and that saving should be reflected in our rates. The schedule to New York is two days longer than before the war.

[fol. 345] I have prepared certain tables of statistics which reflect the railroad operation of the principal carriers interested in this traffic for the period extending from 1914 to 1926, inclusive, and the document now shown to me is this statement. This was prepared from the carriers' reports as filed with the California Railroad Commission for the California lines. The other figures indicated on the first page were secured from the "Railway Age".

Pages 12, 13, and 14 of this exhibit show a comparison of the percentage increase in net railway operating income for 1926 over the average income for the twelve year period, 1914 to 1925. Each road has been treated in the same manner. Pages 15, 16, and 17, show percentage increase in the net railway operating income, December 31, 1926, over the year 1914.

Thereupon, there was offered and admitted in evidence, Complainant's Exhibit No. 40, which is in the following form:

(Here follow Complainants' Exhibits Nos. 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, and 53, marked side folio pages 346-391, inc.)

[fol. 392] The compilations stated in exhibits 40 to 53, inclusive, are to the best of my knowledge and belief, accurate and correct.

I have prepared a chart showing percentage of monthly and total annual carload shipments of deciduous fruits from California to interstate destination and percentage of monthly and total annual net railway operating income of the Southern Pacific, Santa Fe and Western Pacific for the year 1925. That chart shows that when our tonnage is moving at its heaviest, the net railway operating income of the carriers is at its highest point.

COMPLAINANT'S EXHIBIT No. 40

WITNESS Remington

PAGE 1 OF 17 PAGES

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE
VS. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.

DOCKET No. 19130

STATISTICS OF RAILROAD OPERATION FOR THE THIRTEEN YEAR PERIOD, 1914 TO 1926, INCLUSIVE, FOR THE FOLLOWING ROADS:

SOUTHERN PACIFIC COMPANY

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

THE WESTERN PACIFIC RAILROAD COMPANY

UNION PACIFIC RAILROAD COMPANY

CHICAGO AND NORTHWESTERN RAILWAY COMPANY

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY

PENNSYLVANIA RAILROAD COMPANY

NEW YORK CENTRAL RAILROAD COMPANY

ERIE RAILROAD COMPANY (INCLUDING CHICAGO AND ERIE RAILROAD COMPANY)

BALTIMORE AND OHIO RAILROAD COMPANY

ALSO STATEMENTS SHOWING RESULTS OF OPERATIONS FOR 1926, AS COMPARED WITH 1914 AND WITH THE AVERAGE OF THE TWELVE YEAR PERIOD, 1914 TO 1925, INCLUSIVE.

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COMPLAINANT'S EXHIBIT NO._____
WITNESS_____
(PAGE 2 OF 17 PAGES)

SOUTHERN PACIFIC COMPANY (PACIFIC SYSTEM)

YEAR ENDED	OPERATING REVENUES	OPERATING EXPENSES	NET OPERATING REVENUE	RAILWAY OPERATING INCOME	NET RAILWAY OPERATING INCOME	CREDIT BALANCE PROFIT AND LOSS	TON-MILES REVENUE FREIGHT	REVENUE PER TON MILE
JUNE 30, 1914	103,041,325	65,107,378	37,933,947	32,293,330	32,852,751	132,754,773	4,726,481,407	¢1.167
JUNE 30, 1915	97,099,100	61,652,012	35,447,088	30,772,596	31,771,155	131,952,188	4,323,854,021	1.180
DEC. 31, 1916	121,481,981	76,249,255	45,232,726	38,903,977	39,254,527	144,253,254	7,422,906,748	0.993
DEC. 31, 1917	141,653,380	90,961,278	50,692,102	41,101,955	44,811,220	185,111,726	9,233,610,428	0.943
DEC. 31, 1918	153,948,641	113,652,898	40,295,743	33,127,096	33,970,453	194,346,115	8,994,033,120	1.129
DEC. 31, 1919	180,103,022	140,533,063	39,569,959	32,600,793	33,910,785	200,281,599	8,586,179,441	1.313
DEC. 31, 1920	209,132,993	174,918,367	34,214,626	22,550,390	21,580,710	211,024,818	8,873,172,632	1.418
DEC. 31, 1921	200,652,819	151,731,342	48,921,477	36,044,323	33,686,561	250,409,420	7,048,887,487	1.731
DEC. 31, 1922	195,705,453	138,268,427	57,437,026	41,726,069	40,459,532	262,865,080	7,513,884,076	1.608
DEC. 31, 1923	217,101,263	149,112,760	67,988,503	50,910,428	47,147,343	282,196,135	9,176,701,177	1.483
DEC. 31, 1924	204,211,873	147,021,813	57,190,060	40,733,742	38,497,712	294,206,640	9,156,815,341	1.422
DEC. 31, 1925	221,897,524	160,219,517	61,678,007	44,138,046	40,946,019	--	10,569,416,545	1.403
DEC. 31, 1926	226,465,641	157,304,177	69,161,464	51,436,666	48,128,841	--	--	--

COMPLAINANT'S EXHIBIT NO. _____

WITNESS _____

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

YEAR ENDED	OPERATING REVENUES	OPERATING EXPENSES	NET OPERATING REVENUE	RAILWAY OPERATING INCOME	NET RAILWAY OPERATING INCOME	CREDIT BALANCE PROFIT AND LOSS	TON-MILES REVENUE FREIGHT	REVENUE PER TON MILE
JUNE 30, 1914	93,540,268	60,172,701	33,367,567	28,594,044	29,465,256	20,569,801	5,893,379,432	¢1.037
JUNE 30, 1915	97,082,745	61,384,299	35,698,446	30,930,100	31,190,734	20,581,222	6,347,562,891	1.020
DEC. 31, 1916	112,625,273	67,553,414	45,071,859	39,711,168	39,993,699	26,681,975	7,844,315,019	0.964
DEC. 31, 1917	140,978,936	88,504,050	52,474,886	41,869,349	41,842,418	33,193,364	10,789,599,943	0.916
DEC. 31, 1918	162,369,130	114,912,376	47,456,754	40,708,335	41,558,302	41,713,931	10,763,963,788	1.057
DEC. 31, 1919	179,904,498	130,502,744	49,402,254	41,557,139	40,035,269	81,240,260	9,925,696,855	1.251
DEC. 31, 1920	216,242,278	167,057,841	49,184,387	38,235,745	39,304,412	84,115,356	10,401,224,816	1.368
DEC. 31, 1921	189,217,520	142,808,553	46,408,967	32,658,681	34,199,875	106,001,569	7,871,008,839	1.642
DEC. 31, 1922	191,506,230	140,356,508	51,149,723	34,062,108	35,509,010	141,079,825	9,029,371,063	1.473
DEC. 31, 1923	203,311,792	145,687,273	57,624,520	38,545,894	40,815,194	165,149,179	9,889,482,823	1.412
DEC. 31, 1924	194,174,238	141,141,872	53,032,366	36,833,520	38,348,299	186,451,605	10,003,531,499	1.346
DEC. 31, 1925	196,439,057	134,797,467	61,641,590	45,677,956	45,606,325	206,440,631	10,697,780,647	1.321
DEC. 31, 1926	206,337,546	134,803,586	74,533,960	55,761,174	55,493,700	--	--	--

COMPLAINANT'S EXHIBIT NO._____

WITNESS_____

(PAGE 4 OF 11 PAGES)

THE WESTERN PACIFIC RAILROAD COMPANY

YEAR ENDED	OPERATING REVENUES	OPERATING EXPENSES	NET OPERATING REVENUE	RAILWAY OPERATING INCOME	NET RAILWAY OPERATING INCOME	CREDIT BALANCE PROFIT AND LOSS	TON-MILES REVENUE FREIGHT	REVENUE PER TON MILE
JUNE 30, 1914	6,099,573	5,023,044	1,076,529	697,270	335,666	---	595,626,774	$0.785
JUNE 30, 1915	5,708,127	4,419,937	1,288,190	931,305	643,593	-14,537,249	489,687,790	0.802
DEC. 31, 1916	8,270,266	4,950,623	3,319,639	2,942,589	2,572,320	1,429,307	1,020,082,624	0.660
DEC. 31, 1917	9,898,483	6,190,055	3,708,428	3,215,936	3,016,231	1,819,701	1,186,336,845	0.671
DEC. 31, 1918	11,078,410	7,893,879	3,184,531	2,478,698	2,482,583	2,564,645	1,383,344,248	0.665
DEC. 31, 1919	13,657,297	9,545,286	4,112,011	3,515,496	3,546,456	2,416,482	1,407,260,620	0.798
DEC. 31, 1920	15,612,842	12,229,034	3,383,808	2,682,064	2,938,402	3,244,039	1,360,561,508	0.884
DEC. 31, 1921	12,104,155	10,391,343	1,712,812	481,024	951,894	5,400,861	819,658,343	1.095
DEC. 31, 1922	12,505,348	9,837,151	2,668,197	1,704,461	1,966,776	4,491,237	910,306,766	1.041
DEC. 31, 1923	14,138,269	10,663,712	3,474,557	2,522,208	3,014,162	3,042,368	1,044,820,253	1.006
DEC. 31, 1924	14,370,467	11,477,665	2,892,802	2,008,718	2,973,610	1,390,138	1,151,930,276	0.953
DEC. 31, 1925	15,569,045	11,332,942	4,236,103	3,254,470	4,298,500	251,812	1,293,678,927	0.954
DEC. 31, 1926	16,057,065	11,275,140	4,781,925	3,474,610	4,337,205	452,668	--	--

UNION PACIFIC RAILROAD COMPANY

YEAR ENDED	OPERATING REVENUES	OPERATING EXPENSES	NET OPERATING REVENUE	RAILWAY OPERATING INCOME	NET RAILWAY OPERATING INCOME	CREDIT BALANCE PROFIT AND LOSS	TON-MILES REVENUE FREIGHT	REVENUE PER TON-MILE
JUNE 30, 1914	51,075,516	29,624,328	21,451,188	19,187,923	19,012,090	62,689,900	3,801,268,223	0.942
JUNE 30, 1915	51,546,313	30,190,746	21,347,567	19,033,637	19,070,772	69,350,849	3,781,820,555	0.945
DEC. 31, 1916	68,666,374	37,362,008	31,304,366	28,312,464	28,315,018	88,844,914	6,182,843,805	0.829
DEC. 31, 1917	76,988,424	45,938,666	31,049,758	26,498,538	26,147,789	78,675,099	6,893,983,690	0.810
DEC. 31, 1918	98,443,365	59,877,810	38,565,555	35,114,379	35,616,555	77,747,940	8,023,405,952	0.906
DEC. 31, 1919	110,819,515	73,936,679	36,882,836	33,881,779	33,090,528	70,301,045	7,748,730,384	1.042
DEC. 31, 1920	130,764,248	96,087,617	34,676,631	28,769,038	28,491,140	95,416,374	8,307,520,954	1.131
DEC. 31, 1921	114,783,971	77,612,030	37,171,941	30,759,313	28,351,910	105,469,435	5,859,629,781	1.440
DEC. 31, 1922	107,842,566	73,921,927	33,920,639	27,164,947	26,621,319	115,542,255	6,277,864,195	1.285
DEC. 31, 1923	117,479,916	79,094,064	38,385,052	31,568,036	28,844,299	125,685,052	7,267,750,431	1.221
DEC. 31,1924	110,886,386	73,201,926	37,684,460	29,624,209	27,552,006	135,118,906	7,146,687,103	1.147
DEC. 31, 1925	110,131,391	71,609,424	38,521,967	31,533,937	28,995,490	--	--	1.105
DEC. 31, 1926	113,972,308	74,044,571	39,927,737	31,139,905	27,852,065	--	--	--

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COMPLAINANT'S EXHIBIT No. _____

WITNESS _____

(PAGE 6 OF 17 PAGES.)

CHICAGO AND NORTHWESTERN RAILWAY COMPANY

YEAR ENDED	OPERATING REVENUES	OPERATING EXPENSES	NET OPERATING REVENUE	RAILWAY OPERATING INCOME	NET RAILWAY OPERATING INCOME	CREDIT BALANCE PROFIT AND LOSS	TON-MILES REVENUE FREIGHT*	REVENUE PER TON-MILE
JUNE 30, 1914	83,677,051	59,419,292	24,257,759	19,909,381	19,012,693	35,998,883	6,229,944,171	¢0.867
JUNE 30, 1915	80,779,675	56,371,573	24,408,102	19,883,904	19,501,099	35,875,758	6,216,280,599	0.635
DEC. 31, 1916	97,978,844	65,120,827	32,858,017	27,835,731	27,714,459	47,941,323	8,130,953,190	0.708
DEC. 31, 1917	108,264,983	78,758,989	29,505,994	23,815,406	23,762,323	54,239,461	9,220,973,367	0.784
DEC. 31, 1918	127,295,678	109,498,572	17,797,106	12,272,957	12,441,437	52,752,914	9,358,287,213	0.936
DEC. 31, 1919	139,589,915	119,579,387	20,010,528	14,245,619	12,678,750	55,531,372	8,294,482,641	1.110
DEC. 31, 1920	165,692,399	157,110,200	8,582,199	996,034	-1,321,565	60,740,398	9,555,269,662	1.156
DEC. 31, 1921	144,775,476	129,091,428	15,684,048	7,201,883	6,651,137	56,646,946	6,775,908,469	1.412
DEC. 31, 1922	146,100,437	119,191,134	26,909,303	17,877,373	17,036,305	58,496,003	7,579,553,676	1.329
DEC. 31, 1923	160,425,965	132,507,531	27,918,434	18,576,892	15,843,375	57,735,051	9,246,615,383	1.223
DEC. 31, 1924	149,454,584	120,536,645	28,917,939	19,505,576	16,784,051	58,578,857	8,290,312,710	1.249
DEC. 31, 1925	148,538,269	115,626,056	32,912,213	22,861,117	21,108,750	62,031,847	8,286,548,010	1.266
DEC. 31, 1926	154,335,724	120,588,383	33,747,341	24,429,447	22,295,139	--	--	--

COMPLAINANT'S EXHIBIT NO._____

WITNESS_____

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY

YEAR ENDED	OPERATING REVENUES	OPERATING EXPENSES	NET OPERATING REVENUE	RAILWAY OPERATING INCOME	NET RAILWAY OPERATING INCOME	CREDIT BALANCE PROFIT AND LOSS	TON-MILES REVENUE FREIGHT	REVENUE PER TON-MILE
JUNE 30, 1914	91,782,691	61,330,061	30,713,113	26,606,556	26,382,525	40,860,896	8,079,689,505	0.808
JUNE 30, 1915	97,082,745	61,971,701	29,463,673	24,685,113	24,021,925	33,904,375	8,185,988,375	0.781
DEC. 31, 1916	110,609,689	73,765,051	36,844,638	31,327,239	29,607,212	42,247,364	10,747,323,451	0.741
DEC. 31, 1917	113,739,202	85,195,964	28,543,338	21,967,123	20,148,335	30,975,174	10,545,443,466	0.758
DEC. 31, 1918	132,894,455	122,196,105	10,698,350	4,467,774	3,643,192	8,409,920	11,504,301,469	0.840
DEC. 31, 1919	150,370,394	138,561,705	11,808,689	5,362,271	3,134,850	15,797,368	11,501,514,483	0.924
DEC. 31, 1920	168,158,734	164,697,121	3,461,613	-2,721,518	-7,387,601	38,376,167	11,384,600,804	1.029
DEC. 31, 1921	146,765,766	127,957,002	18,808,746	9,763,129	5,117,329	28,159,042	8,283,212,410	1.266
DEC. 31, 1922	156,950,628	129,596,696	27,353,932	17,692,660	13,284,244	22,628,543	10,601,913,667	1.094
DEC. 31, 1923	169,628,338	134,999,228	34,629,110	26,011,818	20,167,714	20,373,792	11,922,243,644	1.073
DEC. 31, 1924	158,366,458	125,550,061	32,816,397	23,674,506	18,972,106	15,411,099	11,004,765,149	1.091
DEC. 31, 1925	162,020,693	130,449,632	31,571,061	22,566,163	16,873,636	10,251,505	11,966,830,189	1.050
DEC. 31, 1926	160,538,440	128,401,168	32,137,272	23,200,202	18,394,933	--	--	--

COMPLAINANT'S EXHIBIT NO. _____

WITNESS _____

(PAGE 8, OF 17 PAGES.)

THE PENNSYLVANIA RAILROAD COMPANY

YEAR ENDED	OPERATING REVENUES	OPERATING EXPENSES	NET OPERATING REVENUE	RAILWAY OPERATING INCOME	NET RAILWAY OPERATING INCOME	CREDIT BALANCE PROFIT AND LOSS	TON-MILES REVENUE FREIGHT	REVENUE PER TON-MILE
JUNE 30, 1914	239,743,244	179,758,008	58,098,520	47,461,152	46,601,252	33,244,676	29,957,435,672	$0.576
JUNE 30, 1915	237,324,140	179,573,185	57,750,955	47,366,129	46,436,755	33,491,052	27,735,313,932	0.604
DEC. 31, 1916	291,369,023	201,726,352	89,642,671	78,863,132	76,484,018	40,678,564	34,583,856,370	0.614
DEC. 31, 1917	333,688,793	263,335,986	70,352,807	56,169,633	51,247,901	45,814,980	36,534,203,036	0.639
DEC. 31, 1918	462,945,017	420,174,781	42,770,236	28,647,830	22,214,396	27,621,844	38,807,666,220	0.781
DEC. 31, 1919	484,434,008	451,497,739	32,936,269	17,589,496	13,406,039	42,212,706	35,660,693,350	0.883
DEC. 31, 1920	569,205,971	603,321,024	-34,115,853	-50,261,020	-56,713,258	48,905,293	36,151,383,535	1.067
DEC. 31,1921	500,175,084	430,758,629	69,416,455	48,636,519	40,994,729	47,083,287	28,298,672,521	1.162
DEC. 31, 1922	646,352,108	534,118,684	112,233,424	83,035,772	73,405,327	42,398,464	40,346,569,722	1.089
DEC. 31, 1923	721,397,408	590,518,030	130,879,378	98,064,258	83,546,666	58,063,423	48,444,210,243	1.038
DEC. 31, 1924	645,299,176	517,450,673	127,848,503	97,177,586	78,799,913	64,754,601	41,567,072,190	1.059
DEC. 31, 1925	672,136,962	527,139,347	144,997,615	113,016,963	100,108,007	88,391,548	44,842,971,253	1.037
DEC. 31,1926	709,817,450	550,360,578	159,456,872	122,085,068	106,432,758	--	--	--

COMPLAINANT'S EXHIBIT NO._____

WITNESS_____

THE NEW YORK CENTRAL RAILROAD COMPANY

YEAR ENDED	OPERATING REVENUES	OPERATING EXPENSES	NET OPERATING REVENUE	RAILWAY OPERATING INCOME	NET RAILWAY OPERATING INCOME	CREDIT BALANCE PROFIT AND LOSS	TON-MILES REVENUE FREIGHT	REVENUE PER TON-MILE.
JUNE 30, 1914	112,705,211	85,983,052	26,722,159	20,463,044	21,389,895	12,027,814	10,420,847,958	ø0.626
JUNE 30, 1915	141,743,257	99,380,886	42,362,371	34,481,709	35,544,731	34,802,408	13,537,145,632	0.615
DEC. 31, 1916	209,303,754	132,949,171	76,354,583	67,509,927	65,921,855	49,844,023	21,707,298,180	0.607
DEC. 31, 1917	238,829,800	170,542,129	68,287,671	56,139,718	53,938,971	75,245,202	24,074,994,019	0.616
DEC. 31, 1918	294,823,036	232,403,705	62,419,331	50,256,280	48,249,098	80,943,298	25,405,973,257	0.748
DEC. 31, 1919	311,032,821	248,940,634	62,092,187	50,443,138	50,004,691	87,623,145	21,567,568,497	0.873
DEC. 31, 1920	372,961,667	357,983,175	14,978,492	3,027,826	358,642	89,933,555	24,116,615,507	0.946
DEC. 31, 1921	322,819,569	248,296,701	74,522,868	54,998,730	56,808,738	99,149,306	15,880,891,403	1.232
DEC. 31, 1922	363,616,476	290,466,061	73,150,415	53,167,950	53,973,004	100,285,964	20,223,879,526	1.128
DEC. 31, 1923	421,034,784	325,917,241	95,117,543	72,355,699	70,989,102	121,779,107	26,321,574,650	1.040
DEC. 31, 1924	369,606,930	279,970,163	89,636,767	66,167,887	64,635,074	138,313,447	21,095,677,532	1.078
DEC. 31, 1925	385,994,505	290,440,958	95,553,547	69,992,348	67,920,550	157,776,949	22,463,486,692	1.069
DEC. 31, 1926	399,497,436	298,926,535	100,570,901	73,530,513	72,131,053	---	---	---

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COMPLAINANT'S EXHIBIT NO._____

WITNESS_____

(PAGE 10 OF 17 PAGES)

ERIE RAILROAD COMPANY (INCLUDING CHICAGO AND ERIE RAILROAD COMPANY)

YEAR ENDED	OPERATING REVENUES	OPERATING EXPENSES	NET OPERATING REVENUE	RAILWAY OPERATING INCOME	NET RAILWAY OPERATING INCOME	CREDIT BALANCE PROFIT AND LOSS	TON-MILES REVENUE FREIGHT	REVENUE PER TON-MILE.
JUNE 30, 1914	57,804,813	43,179,518	14,625,295	12,759,568	12,616,727	31,818,916	7,428,034,970	.575
JUNE 30, 1915	60,830,748	45,845,298	14,985,450	13,161,656	13,388,201	31,794,037	7,727,525,040	0.587
DEC. 31, 1916	72,936,229	47,441,526	25,494,703	23,086,019	21,644,382	34,817,563	9,509,409,411	0.593
DEC. 31, 1917	79,776,368	67,477,124	12,299,244	9,593,416	7,790,767	33,629,950	10,517,591,659	0.583
DEC. 31, 1918	98,895,284	97,404,896	1,490,388	-1,177,068	-2,168,877	33,431,269	10,821,589,515	0.713
DEC. 31, 1919	102,198,905	96,471,563	5,727,342	1,890,086	892,983	37,477,793	10,138,036,708	0.771
DEC. 31, 1920	122,163,099	133,014,160	-10,851,061	-14,055,108	-16,120,863	44,922,002	11,196,730,682	0.861
DEC. 31, 1921	113,428,075	106,117,042	7,311,033	3,531,753	2,133,695	42,889,100	8,609,272,468	1.062
DEC. 31, 1922	106,874,103	100,101,523	6,772,580	2,860,993	644,911	37,781,199	8,277,801,171	1.021
DEC. 31, 1923	132,978,455	108,070,145	24,908,310	20,539,117	18,320,412	51,642,311	11,363,376,567	0.957
DEC. 31, 1924	119,096,856	95,784,775	23,312,081	18,698,550	17,072,178	59,185,718	9,880,512,589	0.966
DEC. 31, 1925	118,543,456	93,238,535	25,304,921	20,509,435	17,530,620	62,724,760	9,469,280,360	1.000
DEC. 31, 1926	125,473,504	99,173,496	26,300,008	21,386,470	18,052,723	--	--	--

THE BALTIMORE AND OHIO RAILROAD COMPANY

YEAR ENDED	OPERATING REVENUES	OPERATING EXPENSES	NET OPERATING REVENUE	RAILWAY OPERATING INCOME	NET RAILWAY OPERATING INCOME	CREDIT BALANCE PROFIT AND LOSS	TON-MILES REVENUE FREIGHT	REVENUE PER TON-MILE
JUNE 30, 1914	97,471,441	72,054,892	24,531,303	21,304,837	20,024,842	32,804,188	13,425,352,328	$0.564
JUNE 30, 1915	91,815,797	63,925,507	27,890,290	24,581,697	25,108,238	32,575,514	12,970,894,074	0.546
DEC. 31, 1916	111,668,680	79,319,804	32,348,876	28,639,064	27,044,897	29,606,586	15,793,944,856	0.560
DEC. 31, 1917	133,613,320	103,024,213	30,589,107	26,112,068	22,593,969	24,853,880	17,163,578,902	0.596
DEC. 31, 1918	174,191,448	160,592,180	13,599,268	8,795,292	7,151,448	20,139,465	16,935,699,196	0.762
DEC. 31, 1919	182,620,016	169,869,125	12,750,891	7,857,724	5,214,853	19,869,183	17,203,592,303	0.795
DEC. 31, 1920	230,225,153	233,340,170	-3,115,017	-8,968,866	-11,809,227	21,194,960	20,932,667,112	0.864
DEC. 31, 1921	196,622,373	166,457,024	32,165,349	24,886,983	21,853,547	21,911,582	14,196,727,702	1.102
DEC. 31, 1922	200,843,170	165,021,374	35,821,796	28,966,881	23,735,006	20,015,285	15,053,798,968	1.060
DEC. 31, 1923	255,594,435	199,323,961	56,270,474	46,305,059	42,133,130	32,223,524	20,616,284,974	1.012
DEC. 31, 1924	224,318,795	172,752,632	51,566,163	41,915,003	38,084,324	33,739,027	17,532,964,820	1.028
DEC. 31, 1925	237,546,940	179,099,597	58,447,343	48,329,024	43,034,067	40,769,842	19,459,442,692	0.995
DEC. 31, 1926	252,361,830	186,306,274	66,055,556	53,978,393	50,805,337	--	--	--

COMPLAINANT'S EXHIBIT NO._____

WITNESS_____

(PAGE 12 OF 17 PAGES)

COMPARATIVE STATEMENT - 1926 VS. AVERAGE 12 YEAR PERIOD, 1914 - 1925, INCLUSIVE

ROAD	YEAR	OPERATING REVENUES	OPERATING EXPENSES	NET RAILWAY OPERATING INCOME	INCREASE IN NET RAILWAY OPERATING INCOME OVER AVERAGE (PER CENT)
S. P. Co.	1926	$226,465,641	$157,304,177	$48,128,841	31.59%
	AVERAGE	170,502,448	122,452,342	36,574,064	
	INCREASE OVER AVERAGE	55,963,193	34,851,835	11,554,777	
A. T. & S. F. Ry.	1926	206,337,546	134,803,586	55,493,700	45.44%
	AVERAGE	164,782,664	116,239,925	38,155,733	
	INCREASE OVER AVERAGE	41,554,882	18,563,661	17,337,967	
N. P. R. R.	1926	16,057,065	11,275,140	4,337,205	81.09%
	AVERAGE	11,584,357	8,662,889	2,395,033	
	INCREASE OVER AVERAGE	4,472,708	2,612,251	1,942,172	
U. P. R. R.	1926	113,972,308	74,044,571	27,852,065	1.25%
	AVERAGE	95,785,665	62,372,102	27,509,076	
	INCREASE OVER AVERAGE	18,186,643	11,672,469	342,989	

COMPARATIVE STATEMENT - 1926 vs. AVERAGE OF 12 YEAR PERIOD, 1914 - 1925, INCLUSIVE (CONTINUED)

ROAD	YEAR	OPERATING REVENUES	OPERATING EXPENSES	NET RAILWAY OPERATING INCOME	INCREASE IN NET RY. OP. INCOME OVER AVERAGE (PER CENT).
C. & N. W. Ry.	1926	$154,335,724.	$120,588,303	$22,295,139	39.92%
	AVERAGE	129,391,106	105,234,303	15,934,401	
	INCREASE OVER AVERAGE	24,954,618	15,354,080	6,360,738	
C.M. & St.P. Ry	1926	160,558,140	120,401,168	18,394,933	26.89%
	AVERAGE	138,197,483	113,022,527	14,497,122	
	INCREASE OVER AVERAGE	22,340,957	15,378,641	3,897,811	
PA. R. R.	1926	709,817,450	550,360,578	106,432,758	121.53%
	AVERAGE	483,672,578	408,281,103	48,044,312	
	INCREASE OVER AVERAGE	226,144,872	142,079,475	58,388,446	
N.Y.C. R. R.	1926	399,497,436	298,926,535	72,131,053	46.77%
	AVERAGE	295,372,651	230,272,823	49,144,529	
	INCREASE OVER AVERAGE	104,124,785	68,653,712	22,986,524	

COMPLAINANT'S EXHIBIT NO._____

WITNESS_____

(PAGE 14 OF 17 PAGES)

COMPARATIVE STATEMENT - 1926 VS. AVERAGE OF 12 YEAR PERIOD, 1914 - 1925, INCLUSIVE, (CONTINUED)

ROAD	YEAR	OPERATING REVENUES	OPERATING EXPENSES	NET RAILWAY OPERATING INCOME	INCREASE IN NET RY. OP. INCOME OVER AVERAGE (PER CENT)
ERIE R. R.	1926	$125,473,504	$ 99,173,496	$18,052,723	131.09%
(INCL. C.& E. R.R.)	AVERAGE	98,793,866	86,178,842	7,812,095	
	INCREASE OVER AVERAGE	26,679,638	12,994,654	10,240,628	
B. & O. R. R.	1926	252,361,830	186,306,274	50,805,337	130.79%
	AVERAGE	178,210,964	147,065,040	22,014,093	
	INCREASE OVER AVERAGE	74,150,866	39,241,234	28,791,244	

COMPARATIVE STATEMENT - 1926 vs. 1914

ROAD	YEAR ENDED	OPERATING REVENUES	OPERATING EXPENSES	NET RAILWAY OPERATING INCOME	INCREASE IN NET RAILWAY OPERATING INCOME (PER CENT)
S. P. Co.	DEC. 31, 1926	$226,465,641	$157,304,177	$48,128,841	46.50%
	JUNE 30, 1914	103,041,325	65,107,378	32,852,751	
	INCREASE OVER 1914	123,424,316	92,196,799	15,276,090	
A.T. & S.F. RY.	DEC. 31, 1926	206,337,546	134,803,586	55,493,700	89.66%
	JUNE 30, 1914	93,540,268	60,172,701	29,465,256	
	INCREASE OVER 1914	112,797,278	74,630,885	26,028,444	
W. P. R. R.	DEC. 31, 1926	16,057,065	11,275,140	4,337,205	1191.35%
	JUNE 30, 1914	6,099,573	5,023,044	335,866	
	INCREASE OVER 1914	9,957,492	6,252,096	4,001,339	
U. P. R. R.	DEC. 31, 1926	113,972,308	74,044,571	27,852,065	46.49%
	JUNE 30, 1914	51,075,516	29,624,328	19,012,090	
	INCREASE OVER 1914	62,896,792	44,420,243	8,839,975	

COMPLAINANT'S EXHIBIT NO._____

WITNESS_____

(PAGE 16 OF 17 PAGES)

COMPARATIVE STATEMENT - 1926 VS. 1914 (CONTINUED)

ROAD	YEAR ENDED	OPERATING REVENUES	OPERATING EXPENSES	NET RAILWAY OPERATING INCOME	INCREASE IN NET RAILWAY OPERATING INCOME (PER CENT)
C. & N.W. RY	DEC. 31, 1926	$154,335,724	$120,588,383	$22,295,139	17.26%
	JUNE 30, 1914	83,677,051	59,419,292	19,012,693	
	INCREASE OVER 1914	70,658,673	61,169,091	3,282,446	
C.M. & ST.P. RY.	DEC. 31, 1926	160,538,440	128,401,168	18,394,933	∅ 30.28%
	JUNE 30, 1914	91,782,691	61,330,061	26,382,525	
	INCREASE OVER 1914	68,755,749	67,071,107	∅ 7,987,592	
PA. R. R.	DEC. 31, 1926	709,817,450	550,360,578	106,432,758	128.39%
	JUNE 30, 1914	239,743,244	179,758,008	46,601,252	
	INCREASE OVER 1914	470,074,206	370,602,570	59,831,506	
N.Y.C. R. R.	DEC. 31, 1926	399,497,436	298,926,535	72,131,053	237.22%
	JUNE 30, 1914	112,705,211	85,983,052	21,389,895	
	INCREASE OVER 1914	286,792,225	212,943,483	50,741,158	

∅ DECREASE

COMPLAINANT'S EXHIBIT NO._____

WITNESS_____

COMPARATIVE STATEMENT - 1926 VS. 1914 (CONTINUED)

ROAD	YEAR ENDED	OPERATING REVENUES	OPERATING EXPENSES	NET RAILWAY OPERATING INCOME	INCREASE IN NET RAILWAY OPERATING INCOME (PER CENT)
ERIE R. R.	DEC. 31, 1926	$125,473,504	$ 99,173,496	$18,052,723	43.08%
(INC. C.&E. R.R.)	JUNE 30, 1914	57,804,813	43,179,518	12,616,727	
	INCREASE OVER 1914	67,668,691	55,993,978	5,435,996	
B.& O. R.R.	DEC. 31, 1926	252,361,830	186,306,274	50,805,337	153.71%
	JUNE 30, 1914	97,471,441	72,054,892	20,024,842	
	INCREASE OVER 1914	154,890,389	114,251,382	30,780,495	

I have prepared a statement, and the document now shown to me is that statement, showing the operating revenues and operating expenses of the Santa Fe for the years 1911 to 1936, inclusive. This statement also shows the operating ratio by years.

Thereupon, there was offered and admitted in evidence, Complainant's Exhibit No. 41, which is in the following form:

(here is inserted ~~one~~ one copy of the ~~exhibit~~ the original statement).

COMPLAINANT'S EXHIBIT No. 41
WITNESS Remington
(PAGE 41)

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE VS. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.

DOCKET No. 19130

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

STATEMENT SHOWING OPERATING REVENUES AND OPERATING EXPENSES FOR THE YEARS 1911 TO 1926, INCLUSIVE.

ITEM	YEAR ENDING JUNE 30						YEAR ENDING DECEMBER 31			
	1911	1912	1913	1914	1915	1916	1916	1917	1918	1919
RAILWAY OPERATING REVENUES	89,164,216	89,856,346	98,090,754	93,540,268	97,082,745	112,625,273	121,578,879	140,978,930	162,369,130	179,904,498
RAILWAY OPERATING EXPENSES	56,637,494	57,666,316	63,030,683	60,172,701	61,384,299	67,553,414	72,896,804	88,504,050	114,912,375	130,502,244
NET REVENUE FROM RAILWAY OPERAT'NS	32,526,722	32,190,030	34,260,071	33,367,567	35,698,446	45,071,859	48,682,075	52,474,886	47,456,755	49,402,254
RAILWAY TAX ACCRUALS	2,925,996	3,556,069	4,067,432	4,773,441	4,748,259	5,327,652	5,675,740	10,505,159	6,726,927	7,811,543
UNCOLLECTIBLE RY. REVENUES,	(B)	(B)	(B)	(B)	20,087	33,039	23,749	20,378	21,492	33,572
RAILWAY OPERATING INCOME	29,600,726	28,633,961	30,192,639	28,594,126	30,930,100	39,711,168	42,782,586	41,869,349	40,708,336	41,557,139
EQUIPMENT RENTS - CR.	171,224	447,281	869,927	292,918(C)	520,851	610,194	764,537	565,663	1,411,023	871,213(C)
JOINT FACILITY RENTS - DR.	104,048	196,614	230,983	183,273	260,217	371,002	502,007	592,594	561,056	650,656
NET RAILWAY OPERATING INCOME	29,667,802	28,884,628	30,831,583	28,117,935	31,190,734	40,150,360	43,065,116	41,842,418	41,558,303	40,035,270
RATIO OF EXPENSES TO REVENUES (PER CENT)	63.52	64.17	65.07	64.33	63.23	59.98	59.96	62.77	70.77	72.53

(B) NONE REPORTED.
(C) DEBIT.

COMPLAINANT'S EXHIBIT NO. 41

WITNESS Remington

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE VS. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL. (PAGE 2)

DOCKET NO. 19130

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

STATEMENT SHOWING OPERATING REVENUES AND OPERATING EXPENSES FOR THE YEARS 1911 TO 1926, INCLUSIVE.

YEAR ENDING DECEMBER 31

ITEM	1920	1921	1922	1923	1924	1925	1926
RAILWAY OPERATING REVENUES	$216,242,278	$189,217,520	$191,506,230	$203,311,792	$194,174,238	$196,439,057	$206,337,546
RAILWAY OPERATING EXPENSES	167,057,841	142,808,553	140,356,508	145,687,273	141,141,872	134,797,467	134,803,586
NET REVENUE FROM RAILWAY OPERATIONS	49,184,387	46,408,967	51,149,723	57,624,520	53,032,366	61,641,590	74,533,960
RAILWAY TAX ACCRUALS	10,907,378	13,699,707	17,035,498	18,983,092	16,146,590	15,906,422	18,735,885
UNCOLLECTIBLE RAILWAY REVENUES	41,264	50,579	52,116	95,534	52,256	57,211	36,901
RAILWAY OPERATING INCOME	38,235,745	32,658,681	34,062,108	38,545,094	36,833,520	45,677,958	55,761,174
EQUIPMENT RENTS - CR.	1,927,878	2,086,505	1,937,822	2,705,791	1,964,297	566,123	256,771
JOINT FACILITY RENTS - DR.	859,210	545,311	490,920	436,491	449,518	637,756	524,245
NET RAILWAY OPERATING INCOME	39,304,412	34,199,875	35,509,010	40,815,194	38,348,299	45,606,325	55,493,700
RATIO OF EXPENSES TO REVENUES (PER CENT)	86.89	69.11	73.29	71.66	72.69	68.62	64.4

I have also prepared a similar statement covering the Pacific System of the Southern Pacific Company. The statement now shown to me is that statement.

Thereupon, there was offered and admitted in evidence, Complainant's Exhibit No. 42, which is in the following form:

(Insert photostatic copy of exhibit on the original statement).

COMPLAINANT'S EXHIBIT No. 42

WITNESS Remington
(PAGE #1)

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE vs. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.

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DOCKET No. 19130

SOUTHERN PACIFIC COMPANY (PACIFIC SYSTEM)

STATEMENT SHOWING OPERATING REVENUES AND OPERATING EXPENSES FOR THE YEARS 1911 TO 1926, INCLUSIVE.

ITEM	YEAR ENDING JUNE 30						YEAR ENDING DECEMBER 31			
	1911	1912	1913	1914	1915	1916	1916	1917	1918	1919
RAILWAY OPERATING REVENUES	$91,108,761	$90,621,090	$95,335,315	$92,038,088	$97,099,099	$115,942,990	$121,481,981	$141,653,380	$153,948,641	$169,728,931
RAILWAY OPERATING EXPENSES	52,234,137	52,010,583	54,671,494	54,991,140	61,652,011	71,678,819	76,249,255	90,961,279	113,652,098	129,448,485
NET REVENUE FROM RY. OPERATIONS	38,874,624	38,602,507	40,663,821	37,046,948	35,447,088	44,264,171	45,232,726	50,692,101	40,295,743	40,280,446
RAILWAY TAX ACCRUALS	182,044	193,816	186,523	5,640,617	4,635,446	5,066,111	6,290,488	9,554,152	7,127,320	6,815,959
UNCOLLECTIBLE RY. REVENUES	(c)	(c)	35,178	90,711	39,045	19,022	38,262	35,994	41,327	29,547
RAILWAY OPERATING INCOME	38,692,580	38,408,691	40,442,120	31,315,620	30,772,597	39,176,237	38,903,976	41,101,955	33,127,096	33,434,940
EQUIPMENT RENTS - CR.	(c)	(c)	(c)	487,650	998,726	519,073	572,448	3,630,395	694,368	849,104(B)
JOINT FACILITY RENTS - CR.	(c)	(c)	(c)	71,771	9,831	218,535(B)	221,891(B)	78,869	148,989	25,127(B)
NET RAILWAY OPERATING INCOME	38,692,580	38,408,691	40,442,120	31,875,041	31,781,154	39,476,775	39,254,527	44,611,219	33,970,453	32,560,709
RATIO OF EXPENSES TO REVENUES (PER CENT)	57.33	57.40	57.34	59.75	63.49	61.82	62.76	64.21	73.82	76.27

(B) DEBIT BALANCE.
(C) NONE REPORTED.

COMPLAINANTS' EXHIBIT NO. 42
WITNESS Remington
(PAGE 32)

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE vs. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.

DOCKET NO. 19130

SOUTHERN PACIFIC COMPANY (PACIFIC SYSTEM)

STATEMENT SHOWING OPERATING REVENUES AND OPERATING EXPENSES FOR THE YEARS 1911 TO 1926, INCLUSIVE.

YEAR ENDING DECEMBER 31.

ITEM	1920	1921	1922	1923	1924	1925	1926
RAILWAY OPERATING REVENUES	$209,132,993	$200,652,819	$195,705,453	$217,101,263	$204,211,873	$221,897,524	$226,465,641
RAILWAY OPERATING EXPENSES	174,918,367	151,731,342	138,268,427	149,112,760	147,021,813	160,219,517	157,304,177
NET REVENUE FROM RAILWAY OPERATINGS OPERATIONS	34,214,626	48,921,477	57,437,026	67,988,503	57,190,060	61,678,007	69,161,464
RAILWAY TAX ACCRUALS	11,609,340	12,792.305	15,619,677	17,030,400	16,372,383	17,491,436	NOT REPORTED
UNCOLLECTIBLE RAILWAY REVENUES	54,896	84,849	91,281	47,675	83,935	48,525	NOT REPORTED
RAILWAY OPERATING INCOME	22,550,390	36,044,323	41,726,069	50,910,428	40,733,742	44,138,046	51,436,666
EQUIPMENT:- RENTS - CR.	DR.1,501,747	DR. 2,233,646	DR. 1,403,306	DR.3,948,366	DR.2,284,037	DR. 3,056,499	NOT REPORTED
JOINT FACILITY: RENTS - CR.	532,067	DR. 124,116	136,769	185,281	48,007	DR. 135,528	NOT REPORTED
NET RAILWAY - OPERATING INCOME	21,580,710	33,686,561	40,459,532	47,147,343	38,497,712	40,946,019	48,128,841
RATIO OF EXPENSES TO REVENUES (PER CENT)	83.32	75.62	70.65	68.68	70.26	70.62	68.4

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I have also prepared a similar statement for the Western Pacific, and the document now shown to me is a copy of that statement.

Thereupon, there was offered and admitted in evidence, Complainant's Exhibit No. 43, which is in the following form:

(here is inserted a true copy of the exhibit on the original manuscript).

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT SHOWING OPERATING REVENUES AND OPERATING EXPENSES FOR THE YEARS 1911 TO 1926, INCLUSIVE.

ITEM		YEAR ENDING JUNE 30TH (B) 1911	1912	1913	1914	1915	YRS. ENDING DEC. 31ST (B) 1916	1916	1917	1918	1919
RAILWAY OPERATING REVENUES		$ 5,258,532	$ 6,173,628	$6,099,573	$5,708,126	$7,466,004	$8,270,262	$9,898,483	$11,078,409	$13,657,297	
RAILWAY OPERATING EXPENSES	NOT IN	4,229,864	4,478,835	4,995,892	4,419,936	4,787,892	4,950,622	6,190,055	7,893,879	9,545,286	
NET REVENUE FROM RY. OPERATIONS	OPERATION	1,028,668	1,694,793	1,103,681	1,288,190	2,678,112	3,319,640	3,708,428	3,184,530	4,112,011	
RAILWAY TAX ACCRUALS		185,234	278,096	379,259	355,033	349,174	376,459	492,297	704,073	595,265	
UNCOLLECTIBLE RAILWAY REVENUES		-	224	-	1,852	1,532	592	195	1,759	1,250	
RAILWAY OPERATING INCOME		843,434	1,416,473	724,422	931,305	2,327,406	2,942,589	3,215,936	2,478,698	3,515,496	
EQUIPMENT RENTS - DR.		203,495	302,282	300,959	233,079	294,359	333,041	64,682	5,871	53,493	
JOINT FACILITY RENTS - DR.		28,515	57,010	60,445	54,633	30,155	37,229	35,023	9,755(c)	84,452(c)	
NET RAILWAY OPERATING INCOME		611,424	1,057,181	363,018	643,593	1,994,892	2,572,319	3,116,231	2,482,582	3,546,455	
RATIO OF EXPENSES TO REVENUES(PER CENT)		80.44	72.55	81.90	77.43	64.12	59.86	62.53	71.25	69.89	

(B) FIGURES FOR YEARS ENDING JUNE 30TH ARE FOR WESTERN PACIFIC RAILWAY CO., THE PREDECESSOR COMPANY
(C) CREDIT BALANCE.

COMPLAINANT'S EXHIBIT No. #3

BEFORE THE INTERSTATE COMMERCE COMMISSION

WITNESS Rossington

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE VS. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL. (PAGE 12)

DOCKET No. 19130

THE WESTERN PACIFIC RAILROAD COMPANY.

STATEMENT SHOWING OPERATING REVENUES AND OPERATING EXPENSES FOR THE YEARS 1911 TO 1926, INCLUSIVE.

ITEM	YEAR ENDING DECEMBER 31. 1920	1921	1922	1923	1924	1925	1926
RAILWAY OPERATING REVENUES	$15,612,842	$12,104,155	$12,505,3[illegible]	$14,138,269	$14,370,467	$15,569,045	$16,057,065
RAILWAY OPERATING EXPENSES	12,229,034	10,391,343	9,837,151	10,663,712	11,477,665	11,332,942	11,275,140
NET REVENUE FROM RAILWAY OPERATIONS	3,383,808	1,712,812	2,668,197	3,474,557	2,892,802	4,236,103	4,781,925
RAILWAY TAX ACCRUALS	700,436	1,230,981	962,895	951,168	877,173	979,995	1,305,603
UNCOLLECTIBLE RAILWAY REVENUES	1,309	807	842	1,181	6,911	1,638	1,713
RAILWAY OPERATING INCOME	2,682,064	481,024	1,704,461	2,522,208	2,008,718	3,254,470	3,474,610
EQUIPMENT RENTS - DR.	CR. 291,577	CR.544,373	CR.335,991	CR.560,163	CR.921,672	CR.870,156	CR. 642,879
JOINT FACILITY RENTS - DR.	35,239	73,503	73,676	68,209	CR. 43,220	CR. 173,874	CR. 219,716
NET RAILWAY OPERATING INCOME	2,938,402	951,894	1,966,776	3,014,162	2,973,610	4,298,500	4,337,205
RATIO OF EXPENSES TO REVENUES (PER CENT)	75.64	85.85	78.66	75.42	79.87	72.79	70.2

I have likewise prepared a statement affording comparison between operating revenuesand operating expenses of the Santa Fe for the years 1926 and 1921. The document now shown to me is that statement.

Thereupon, there was offered and admitted in evidence, Complainant's Exhibit No. 44, which is in the following form:

(have to inserted a true copy of the exhibit on the original statement)

COMPLAINANT'S EXHIBIT No. 44

WITNESS Remington

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE VS.
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.

DOCKET No. 19130

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

STATEMENT SHOWING COMPARISON BETWEEN OPERATING REVENUES AND OPERATING EXPENSES FOR THE YEARS 1926 AND 1921

ITEM	YEAR ENDING DECEMBER 31		INCREASE 1926 OVER 1921	
	1926	1921	AMOUNT	PERCENT
RAILWAY OPERATING REVENUES	$ 206,337,546	$ 189,217,520	$ 17,120,026	9.05%
RAILWAY OPERATING EXPENSES	134,803,586	142,808,553	(D) 8,004,967	(D) 5.61%
NET REVENUE FROM RAILWAY OPERATIONS	74,533,960	46,408,967	28,124,993	60.60%
RAILWAY TAX ACCRUALS	18,735,885	13,699,707	5,036,178	36.76%
UNCOLLECTIBLE RAILWAY REVENUES	36,901	50,579	(D) 13,678	(D) 27.04%
RAILWAY OPERATING INCOME	55,761,174	32,658,681	23,102,493	70.74%
EQUIPMENT RENTS	CR. 256,771	CR. 2,086,507	(D) 1,829,736	(D) 87.69%
JOINT FACILITY RENTS	DR. 524,245	DR. 545,312	(D) 21,067	(D) 3.86%
NET RAILWAY OPERATING INCOME	55,493,700	34,199,875	21,293,825	62.26%

(D) DECREASE.

The statement now shown to me is a similar statement prepared by me covering the Pacific System of the Southern Pacific Company.

Thereupon, there was offered and admitted in evidence, Complainant's Exhibit No. 45, which is in the following form:

(here is inserted a true copy of exhibit in the original statement).

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BEFORE THE INTERSTATE COMMERCE COMMISSION

COMPLAINANT'S EXHIBIT No. 45

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE VS THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.

WITNESS Remington

DOCKET No. 19130

SOUTHERN PACIFIC COMPANY (PACIFIC SYSTEM)

STATEMENT SHOWING COMPARISON BETWEEN OPERATING REVENUES AND OPERATING EXPENSES FOR THE YEARS 1926 AND 1921.

ITEM	YEAR ENDING DECEMBER 31		INCREASE 1926 OVER 1921	
	1926	1921	AMOUNT	PERCENT
RAILWAY OPERATING REVENUES	$ 226,465,641	$ 200,652,819	$ 25,812,822	12.86%
RAILWAY OPERATING EXPENSES	157,304,177	151,731,342	5,572,835	3.67%
NET REVENUE FROM RAILWAY OPERATIONS	69,161,464	48,921,477	20,139,987	41.17%
RAILWAY OPERATING INCOME	51,436,666	36,044,323	15,392,343	42.70%
NET RAILWAY OPERATING INCOME	48,128,841	33,686,561	14,442,280	42.87%

The statement now shown to me is a similar statement prepared by me covering the Western Pacific Railroad Company.

Thereupon, there was offered and admitted in evidence, Complainant's Exhibit No. 46, which is in the following form:

(Here is inserted a true copy of the exhibit in the original statement)

COMPLAINANT'S EXHIBIT NO. 46

WITNESS Remington

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE, vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.
DOCKET NO. 19130

THE WESTERN PACIFIC RAILROAD COMPANY.

STATEMENT SHOWING COMPARISON BETWEEN OPERATING REVENUES AND OPERATING EXPENSES FOR THE YEARS 1926 AND 1921.

ITEM	YEAR ENDING DEC. 31		INCREASE 1926 OVER 1921	
	1926	1921	AMOUNT	PERCENT
RAILWAY OPERATING REVENUES	$16,057,065	$12,104,155	$3,952,910	32.66%
RAILWAY OPERATING EXPENSES	11,275,140	10,391,343	883,797	8.51%
NET REVENUE FROM RY. OPERATIONS	4,781,925	1,712,812	3,069,113	179.18%
RAILWAY TAX ACCRUALS	1,305,603	1,230,981	74,622	6.06%
UNCOLLECTIBE RAILWAY REVENUES	1,713	807	906	112.27%
RAILWAY OPERATING INCOME	3,474,610	481,024	2,993,586	622.33%
EQUIPMENT RENTS	CR. 642,879	CR. 544,373	98,506	18.09%
JOINT FACILITY RENTS	CR. 219,716	DR. 73,503	293,219	398.92%
NET RAILWAY OPERATING INCOME	4,337,205	951,894	3,385,311	355.64%

The statement now shown to me is one prepared by me, entitled "Statement Showing Cumulated Surpluses or Deficits of Trunk Lines Serving California, 1916 to 1926, inclusive." This was taken from the Annual Reports to the California Railroad Commission, except for 1926 the Western Pacific figures, which are from the monthly reports.

Thereupon, there was offered and admitted in evidence, Complainant's Exhibit No. 47, which is in the following form:

(Same to insert a true copy of exhibit in the original statement.)

BEFORE THE INTERSTATE COMMERCE COMMISSION

COMPLAINANT'S EXHIBIT No. #7

WITNESS Remington

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE VS. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.

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DOCKET No. 19130

STATEMENT SHOWING ACCUMULATED SURPLUSES OR DEFICITS OF TRUNK LINES SERVING CALIFORNIA, 1916 - 1926.

YEAR ENDED DEC. 31	SOUTHERN PAC. CO. (PAC. SYSTEM)	A.,T.& S.F. RY.CO.	W.P. R.R. CO.	L.A. & S.L. R.R. CO.
1926	NOT REPORTED	NOT REPORTED	$5,469,540	NOT REPORTED
1925	$220,107,652	$293,340,703	4,635,473	$ 1,537,132
1924	210,382,595	273,159,125	5,153,444	1,563,040
1923	205,452,723	252,277,768	5,339,652	1,385,345
1922	197,898,922	230,384,169	5,167,597	404,905
1921	192,471,228	195,089,632	5,733,082	1,764,047
1920	158,156,833	172,552,334	3,427,842	2,778,663
1919	152,120,678	153,343,170	2,531,602	2,033,675
1918	148,048,145	129,853,064	2,623,069	1,077,369
1917	140,593,113	121,164,209	1,828,046	215,652
1916	117,628,599	106,169,451	1,433,938	1,245,142 #

DEFICIT

The statement now shown to me showing monthly operating ratios for 1925 was prepared by me, and obtained from the "Railway Age". This statement tends to show that for the time of movement of our freight, the operating income ratios decrease, that is the operating ratios are at their lowest point at the time when the deciduous fruit is moving in heavy volume.

Thereupon, there was offered and admitted in evidence, Complainant's Exhibit No. 48, which is in the following form:

(~~Here is inserted a true copy of the original exhibit in the original statement~~)

COMPLAINANT'S EXHIBIT NO. 48

WITNESS Remington

BEFORE THE INTERSTATE COMMERCE COMMISSION.

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE VS. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.

I.C.C. DOCKET NO. 19,130.

STATEMENT SHOWING MONTHLY OPERATING RATIOS FOR 1925.

ROAD	JAN.	FEB.	MAR.	APRIL	MAY	JUN.	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	YEAR
So. Pac. Co.	81.1	81.5	74.7	80.3	78.4	69.7	72.2	65.3	60.6	60.3	65.3	68.9	70.7
A. T. & S.F.Ry	71.8	72.2	79.4	82.1	79.8	74.1	68.3	66.1	62.8	54.7	55.8	68.3	68.6
W.P. R.R.	83.9	91.8	79.5	85.5	84.7	71.4	75.4	66.8	63.8	58.4	69.9	70.4	72.8
L.A.&S.L.R.R.	80.0	88.0	82.5	84.0	78.9	72.0	82.4	71.2	71.2	81.6	84.5	83.8	79.8
U.P. R.R.	72.1	72.3	68.6	71.4	70.1	66.2	73.1	69.2	54.9	52.2	60.3	67.2	65.0
C.& N.W. Ry.	81.8	86.4	85.3	86.5	75.7	74.6	75.9	69.8	71.2	74.8	80.7	78.1	77.8
C.M.& St.P.Ry.	80.6	81.2	83.9	90.3	93.1	89.2	86.6	74.0	70.1	71.4	79.1	75.0	80.5
Pa. R.R.	84.7	84.8	84.2	80.3	78.2	76.4	74.5	72.7	73.0	74.4	79.2	81.2	78.4
N.Y.C. R.R.	80.9	78.9	76.0	74.5	73.1	70.2	72.6	71.9	70.5	76.6	77.6	81.5	75.3
Erie R.R.	95.0	88.7	86.5	80.1	80.6	74.9	77.8	73.6	73.4	81.0	83.0	86.8	81.3
B.& O. R.R.	82.6	82.9	79.3	78.5	76.2	75.6	72.6	70.9	71.1	71.0	73.7	74.3	75.4

The document now shown to me is a similar compilation for the year 1926, prepared by me, having the same object as its predecessor.

Thereupon, there was offered and admitted in evidence, Complainant's Exhibit No. 49, which is in the following form:

(~~Here is inserted a true copy of the exhibit in the original statement~~).

BEFORE THE INTERSTATE COMMERCE COMMISSION.

COMPLAINANT'S EXHIBIT No. 49

WITNESS Pennington

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE VS.
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.

DOCKET No. 19,130

STATEMENT SHOWING MONTHLY OPERATING RATIOS FOR 1926.

ROAD	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	YR.
So. Pac. Co.	77.3	78.2	71.9	76.4	71.8	65.8	66.2	63.7	60.5	60.6	65.1	71.4	68.4
A.T.& S.F.Ry	72.6	72.3	70.6	77.7	76.0	70.0	56.3	54.4	54.1	57.0	57.1	66.6	64.4
W.P. R.R.	78.2	81.1	78.5	82.5	80.4	67.8	66.2	65.1	58.3	58.0	71.3	80.7	70.2
L.A.& S.L.R.R.	92.2	86.9	82.4	87.1	78.1	72.1	78.6	70.5	66.5	68.6	78.4	82.5	78.2
U.P. R.R.	70.9	71.0	68.3	75.0	74.3	72.8	70.6	62.6	51.6	52.8	61.5	64.1	65.0
C.& N.W.Ry.	80.5	80.5	82.0	84.2	77.4	71.1	74.8	73.7	71.1	72.3	84.8	91.5	78.1
C.M.& St.P.Ry	84.7	81.7	80.6	87.5	85.1	80.0	81.6	79.9	70.9	73.2	75.2	83.9	80.0
Pa. R.R.	83.4	86.0	80.7	79.5	76.1	74.9	75.0	72.3	72.2	71.9	76.1	85.6	77.5
N.Y.C. R.R.	79.2	78.0	77.1	76.1	72.3	69.9	72.2	71.0	71.0	76.9	77.3	78.3	74.8
Erie R.R.	96.7	94.3	79.6	84.8	83.1	78.4	82.5	78.7	72.9	75.0	78.8	85.6	81.7
B.& O. R.R.	77.9	82.3	78.7	76.8	74.0	69.3	68.9	69.7	70.2	70.5	73.3	77.8	73.8

The statement now shown to me, entitled "Statement Showing Monthly Carload Shipments of Deciduous Fruit (Other than Apples) from California to Interstate Destinations and Monthly Net Railway Operating Income of the Southern Pacific Company, the Santa Fe and the Western Pacific Railroad for the Year 1925" was compiled under my direction. The purpose of this contrast, showing the movement of fruit in carloads for the period extending from April to December, 1925, and the monthly net railway operating income of the three carriers specified for each month of the year 1925, is to show that as the tonnage of the carriers increases, their net railway operating income also increases. Our fruit predominantly moves when the unit operating expenses are lowest.

Thereupon, there was offered and admitted in evidence, Complainant's Exhibit No. 50, which is in the following form:

(here is inserted a true copy of the exhibit in the original statement.)

BEFORE THE INTERSTATE COMMERCE COMMISSION

COMPLAINANT'S EXHIBIT No. 50

WITNESS Pennington

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE vs. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL,

DOCKET No. 19130

STATEMENT SHOWING MONTHLY CARLOAD SHIPMENTS OF DECIDUOUS FRUIT (OTHER THAN APPLES) FROM CALIFORNIA TO INTERSTATE DESTINATIONS AND MONTHLY NET RAILWAY OPERATING INCOME OF THE SOUTHERN PACIFIC COMPANY (PACIFIC RAIL LINES), THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND THE WESTERN PACIFIC RAILROAD COMPANY FOR THE YEAR 1925.

MONTH	FRUIT (CARLOADS)	So. Pac. Co. (Pac. Rail Lines)	A.,T.& S.F. Ry.	W. P. R. R.
JANUARY	--	$ 1,635,436	$ 2,885,279	$ 194,162
FEBRUARY	--	1,170,241	2,696,883	127,479
MARCH	--	2,750,051	1,857,890	226,170
APRIL	8	1,603,982	1,500,790	168,640
MAY	435	2,302,276	1,957,397	184,720
JUNE	2,576	3,672,769	2,939,220	367,510
JULY	7,008	3,237,989	4,137,667	312,191
AUGUST	9,836	4,759,610	4,291,257	533,822
SEPTEMBER	30,793	5,742,980	5,021,643	649,902
OCTOBER	30,266	5,942,989	7,704,618	754,364
NOVEMBER	5,546	4,301,794	6,680,823	396,632
DECEMBER	327	3,836,779	3,932,858	382,907

The document now shown to me is a similar showing for the year 1926, and has a similar purpose.

Thereupon, there was offered and admitted in evidence, Complainant's Exhibit No. 51, which is in the following form:

(there is inserted a true copy of the exhibit in the reporter's exhibit).

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COMPLAINANT'S EXHIBIT No. 51

WITNESS Remington

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE vs. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.

DOCKET No. 19130

STATEMENT SHOWING MONTHLY CARLOAD SHIPMENTS OF DECIDUOUS FRUIT (OTHER THAN APPLES) FROM CALIFORNIA TO INTERSTATE DESTINATIONS AND MONTHLY NET RAILWAY OPERATING INCOME OF THE SOUTHERN PACIFIC COMPANY (PACIFIC RAIL LINES), THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY AND THE WESTERN PACIFIC RAILROAD COMPANY FOR THE YEAR 1926.

MONTH	FRUIT (CARLOADS)	SO. PAC. CO. (PAC. RAIL LINES)	A.T.& S.F. RY.	W. P. R. R.
JANUARY	--	$ 2,131,025	$ 2,771,510	$ 267,250
FEBRUARY	--	1,694,991	2,698,569	207,922
MARCH	--	3,282,973	3,242,571	203,512
APRIL	.68	2,340,702	2,232,339	162,299
MAY	1,156	3,244,707	2,417,546	192,927
JUNE	3,783	4,629,236	3,503,655	429,877
JULY	9,216	4,541,774	6,771,070	485,727
AUGUST	10,660	5,203,721	6,486,677	515,611
SEPTEMBER	27,413	6,060,628	7,015,128	720,659
OCTOBER	20,808	5,875,878	7,229,121	671,317
NOVEMBER	5,410	4,240,184	6,831,219	305,909
DECEMBER	289	3,371,434	4,294,295	177,351
TOTAL	78,803	[illegible]	[illegible]	[illegible]

I have prepared the further statement now shown to me, showing the percentage of monthly to total annual carload shipments of deciduous fruits from California to interstate destinations, and the percentage of monthly to total annual net railway operating income of the Southern Pacific, Santa Fe and Western Pacific for the years 1925 and 1926. The purpose of this statement is to show on a percentage basis the same thing that is indicated in the preceding exhibit for the year 1925.

Thereupon, there was offered and admitted in evidence, Complainant's Exhibit No. 52, which is in the following form:

(There is inserted a true copy of the exhibit in the original statement.) 9

COMPLAINANT'S EXHIBIT No. 57

WITNESS Remington

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE VS. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.

DOCKET No. 19,130

STATEMENT SHOWING PERCENTAGE OF MONTHLY TO TOTAL ANNUAL CARLOAD SHIPMENTS OF DECIDUOUS FRUIT (OTHER THAN APPLES) FROM CALIFORNIA TO INTERSTATE DESTINATIONS AND PERCENTAGE OF MONTHLY TO TOTAL ANNUAL NET RAILWAY OPERATING INCOME OF THE SOUTHERN PACIFIC COMPANY (PACIFIC RAIL LINES), THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY AND THE WESTERN PACIFIC RAILROAD COMPANY FOR THE YEARS 1925 AND 1926.

MONTH	1925				1926			
	FRUIT SHIPMENTS	S.P.Co.	A.,T.& S.F.Ry.	W.P. R.R.	FRUIT SHIPMENTS	S.P.Co.	A.,T.& S.F.Ry.	W.P.R.R.
JANUARY	-	3.99%	6.33%	4.52%	-	4.57%	5.00%	6.16%
FEBRUARY	-	2.86	5.91	2.96	-	3.64	4.86	4.79
MARCH	-	6.71	4.07	5.26	-	7.04	5.84	4.69
APRIL	0.01%	3.92	3.29	3.92	0.09%	5.02	4.02	3.74
MAY	0.50	5.62	4.29	4.30	1.47	6.96	4.36	4.44
JUNE	2.97	8.97	6.45	8.55	4.80	9.93	6.31	9.90
JULY	8.07	7.91	9.07	7.26	11.69	9.73	12.20	11.19
AUGUST	11.33	11.62	9.41	12.42	13.53	11.17	11.69	11.88
SEPTEMBER	35.48	14.02	11.01	15.12	34.78	13.00	12.64	16.60
OCTOBER	34.87	14.51	16.90	17.55	26.41	12.61	13.03	15.47
NOVEMBER	6.39	10.50	14.65	9.23	6.86	9.10	12.31	7.05
DECEMBER	0.38	9.37	8.62	8.91	0.37	7.23	7.74	4.09
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

I have likewise compiled the statement entitled "Statement Showing Aggregate Operating Revenues and Expenses, 1921 to 1926, inclusive, of the Four Trunk Lines Serving California".

Thereupon, there was offered and admitted in evidence, Complainant's Exhibit No. 53, which is in the following form:

(Here is inserted a true copy of the exhibit in the original statement).

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BEFORE THE INTERSTATE COMMERCE COMMISSION

COMPLAINANT'S EXHIBIT NO. 53

WITNESS Remington

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE vs. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.

I.C.C. DOCKET NO. 19130

STATEMENT SHOWING AGGREGATE OPERATING REVENUES AND EXPENSES, 1921 TO 1926, INCLUSIVE, OF THE FOUR TRUNK LINES SERVING CALIFORNIA (SOUTHERN COMPANY COMPANY - PACIFIC SYSTEM, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY AND LOS ANGELES AND SALT LAKE RAILROAD COMPANY.)

ITEM	1921	1922	1923	1924	1925	1926
RAILWAY OPERATING REVENUES	$421,498,800	$419,832,031	$459,380,665	$437,140,007	$458,449,730	$473,422,000
RAILWAY OPERATING EXPENSES	321,341,884	305,344,439	324,316,594	319,586,316	325,933,610	322,595,028
NET RAILWAY OPERATING REVENUE	100,156,916	114,487,593	135,064,072	117,553,690	132,516,120	153,826,972
RAILWAY OPERATING INCOME	71,170,200	79,388,488	96,468,999	82,438,194	96,432,284	114,420,081
NET RAILWAY OPERATING INCOME	70,298,291	79,360,708	94,664,070	81,697,488	93,173,303	110,520,485

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Thereupon there was offered and admitted in evidence, certain graphic charts, which were marked complainant's Exhibit Nos. 54 to 61, inclusive, showing in graphic form the foregoing testimony of Witness Remington, and in graphic form, the testimony set forth in Exhibits Nos. 41 to 53, inclusive, showing graphic comparison of the fruit movement with the monthly operating ratios of the principal California carriers for the years 1925 and 1926; for the Union Pacific, the Chicago & Northwestern, Chicago, Milwaukee and St. Paul, and the Pennsylvania Railroad for the year 1925 and for 1926; also extending the same showing to the New York Central, the Erie and the Baltimore & Ohio for the years 1925 and 1926.

[fol. 393] C. B. ACKERMAN was thereupon called as a witness on behalf of complainant, and having been duly sworn, testified as follows:

I reside at Chicago, Illinois. I am engaged as a freight traffic analyst, serving the general public.

I have had approximately twenty-six years of railroad experience. Most of my duties during that time had to do with freight rates and traffic matters, although I have had some operating experience. I have been connected with the Chicago & Northwestern Railway, Chicago, Milwaukee, & St. Paul Railway, Wabash Railroad, Chicago Great Western Railroad and Southern Pacific Railway. In April, 1920, I resigned my position as Assistant to the Freight Traffic Manager of the Chicago & Northwestern Railway at Chicago and was appointed Assistant to Manager of the Bureau of Liquidation Claims, United States Railroad Administration, and subsequently my position was changed to that of Traffic Assistant to the Director General of the United States Railroad Administration. I retained that position until April, 1924, when I voluntarily resigned and took up my present occupation.

During the period of Federal control I was Assistant to the Traffic Manager of the Chicago & Northwestern Railroad, who was also Chairman of the Western District Freight Traffic Committee of the United States Railroad Administration. During the period of Federal control all

rate changes affecting territory from Chicago to the Pacific Coast in some manner or other passed over my desk.

After the termination of Federal control I went to Washington and was engaged for four years in the preparation, investigation and presentation of cases to the Interstate [fol. 394] Commerce Commission in Chicago and territory from Chicago to the Pacific Coast, generally, including all transcontinental traffic, some traffic in the Southeast, some traffic in the Central Freigth Association territory, some in the Trunk Line territory and occasionally in New England territory. During my connection with the Railroad Administration at Washington, I had occasion to make sixteen trips from Washington to the Pacific Coast and return and many other shorter trips throughout the United States and appeared many times before the Interstate Commerce Commission.

Since leaving the United States Railroad Administration I have been engaged in general practice before the Interstate Commerce Commission and the Illinois Commerce Commission. My experience and work has covered not only rate and traffic matters generally, but likewise analyses of railway operating statistics.

I have made an analysis of the deciduous fruit adjustment from California to the East and I have made similar analysis of the fruit rate adjustments throughout the United States quite generally in connection with this case. In my analyses and preparation of my exhibits I have used as a base weight 30,000 pounds, for the reasons explained by Mr. Remington, to the effect that if a minimum of 30,000 pounds is prescribed for the movements of grapes, grapes predominating to the extent of about 78% of the total deciduous fruit movement from California, the loading of grapes will be in excess of 30,000 pounds and it will bring up the average loading to about 30,000 pounds for the deciduous fruit movement from California to the East. I have taken as the average distance from California to the East 2,909 miles, which is the distance that was shown to be [fol. 395] the actual average for the traffic in Docket No. 15,137. I have not found many rates upon fruits or vegetables which were in effect for distances comparable with

the average haul of the California deciduous fruits. Those which I have found I have used for comparative purposes.

Thereupon a statement was offered and marked for identification Complainant's Exhibit No. 62.

This exhibit deals with rates from the Gulf ports shown on page 2 of the exhibit, namely New Orleans, Mobile, Pensacola and Port Chalmette, Louisiana, the ports of the Gulf of Mexico through which bananas are imported into the United States. New Orleans is the principal port through which bananas are imported. The destinations shown are destinations in Central Freight Association and Eastern Trunk Line territories.

I have used in this exhibit, as in the exhibits which are to follow, the port line workable routes and have computed the distances via those routes.

Page 2 of this exhibit shows the points of origin, destination territory, routing, distance, rates, the average loading and the minimum car earnings. The car earnings are all based on the gross car earnings which the rates yield. I have also shown the net car earnings which the carriers earn after allowance is made for terminal deductions at New Orleans, page 3 of the exhibit showing $18.50 per car as a minimum which the carriers pay out of their earnings.

Bananas are highly perishable and require expedited service. Carriers handle bananas in special trains when loads of ten cars or more are offered. Taking the Illinois Central Railroad as representative, the banana trains are [fol. 396] started north bound over the Illinois Central Railroad without billing, the traffic being so highly perishable that it is necessary to get the trains under way without waiting for billing. Telegraph billing is then opened, and waybills are then made out at Memphis or, in some instances, not until the cars reach Carbondale, in the southern part of Illinois. In addition to that, free transportation is furnished to caretakers in charge of bananas in both directions. Also free telegraph advice is furnished caretakers in charge of cars of bananas and is transmitted over the railroad company's line without charge.

On page 3 of the exhibit I have shown the extent of these gratuitous services furnished by the carriers to care-takers

in charge of bananas. On page 3 will be found round trip fares between Gulf ports and destinations shown on page 2 of the exhibit. The messengers in charge of the bananas are transported in the cabooses. It is the common and customary thing for a messenger to accompany banana shipments.

On this exhibit I have not shown the gross ton mile earnings, but they are incorporated in a summary of rates in a succeeding exhibit.

The average loading of bananas shown here as 21,000 pounds was obtained from an Interstate Commerce Commission report. All of the symbols, except reference marks, which I have used throughout my exhibits will be explained in an exhibit which is to follow.

There is a very substantial movement of bananas from New Orleans and other Gulf ports to the interior. It is a traffic which moves throughout the year. It moves, however, in trains which contain fewer cars per train, with cor- [fol. 397] respondingly lower gross earnings, than do the deciduous fruit trains which handle deciduous fruits from California to the East.

I think that we can fairly consider the banana rates for the purpose of arriving at a fair conclusion as to the propriety of rates on deciduous fruits from California to eastern destinations. I think that the service given bananas is greater than that given deciduous fruits. It is a traffic which has many of the characteristics of the deciduous fruit traffic and it has some that the deciduous fruit traffic does not, such as caretakers in charge of shipments, fewer cars per train, telegraphic instructions to messengers transported over Company wires free of charge, and occasional handling of extra cabooses on the banana trains to accommodate the messengers. Also, 1,400 pounds of straw and racks are transported in the cars without charge; that is provided for in the tariff.

The approximate value of bananas as found by the Interstate Commerce Commission is from $2.50 to $4.20 per hundred pounds at the Gulf ports. The carriers handling bananas from Gulf ports claim that a car of bananas ranges from $1,462.50 to $2,520.00 in value.

[fol. 398]

California

Comparison of Rates and Charges Assessed for Transportation of
Charges Assessed for Transportation, in Ot

[fols. 399 & 400]

Commodity	From	To	Distance
Bananas	New Orleans, La.	Chicago, Ill.	920
		Cincinnati, Ohio	849
		Cleveland, "	1111
		Detroit, Mich.	1194
		Grand Rapids, Mich.	1108
		Bay City, "	1208
	Mobile, Ala.	Traverse City, "	1253
		Mackinaw City, "	1332
	Pensacola, Fla.	Toronto, Ont.	1410
	Port Chalmette, La.	Cumberland, Md.	x 1170
		Baltimore, "	x 1107
		Pittsburgh, Pa.	x 1160
		Philadelphia, Pa.	x 1162
		Buffalo, N. Y.	1294
		Syracuse, N. Y.	1413
		Albany, N. Y.	x 1396
		New York, N. Y.	x 1254
		Totals	20241
		Average	1190
Deciduous Fruits	California Origins	Eastern Destinations	A2909

Deciduous Fruits	California Origins	Eastern Destinations	A2909

[fol. 398]

EXHIBIT No. 62

I. C. C. DOCKET 19130

California Growers' and Shippers Protective League

Comparison of Rates and Charges Assessed for Transportation of Deciduous Fruits from California Producing Territory to Eastern Destinations, with Rates and Charges Assessed for Transportation, in Other Territories, of Commodities of Similar Transportation Characteristics

[fols. 399 & 400]

Commodity	From	To	Distance	Rates	Car Earnings (1) Gross	Car Earnings (1) After Absorbing Minimum Terminal Charges at New Orleans	Car Mile Earnings (1) Gross	Car Mile Earnings (1) After Absorbing Minimum Terminal Charges at New Orleans	Weights
				Compared Rates and Charges					
Bananas	New Orleans, La.	Chicago, Ill.	920	.795	169.34	$153.09	18.4	16.6	F-21300 M-20000
		Cincinnati, Ohio	849	.695	148.03	129.53	17.4	15.2	
		Cleveland, "	1111	.87	185.31	166.81	16.6	15.0	
		Detroit, Mich.	1194	.83	176.79	158.29	14.8	13.2	
		Grand Rapids, Mich.	1108	.90	191.70	173.20	17.3	15.6	
		Bay City, "	1208	.90	191.70	173.20	15.8	14.3	
	Mobile, Ala.	Traverse City, "	1253	1.05	223.65	205.15	17.8	16.3	
		Mackinaw City, "	1332	1.05	223.65	205.15	16.7	15.4	
	Pensacola, Fla.	Toronto, Ont.	1410	.95	202.35	183.85	14.3	13.0	
	Port Chalmette, La.	Cumberland, Md.	x 1170	.90	191.70	173.20	16.3	14.8	
		Baltimore, "	x 1107	1.02	217.26	198.76	19.6	17.9	
		Pittsburgh, Pa.	x 1160	.95	202.35	183.85	17.4	15.8	
		Philadelphia, Pa.	x 1162	1.02	217.26	198.76	18.6	17.1	
		Buffalo, N. Y.	1294	.95	202.35	183.85	15.6	14.2	
		Syracuse, N. Y.	1413	1.01	215.13	196.63	15.2	13.9	
		Albany, N. Y.	x 1396	1.02	217.26	198.76	15.5	14.2	
		New York, N. Y.	x 1254	1.02	217.26	198.76	17.3	15.8	
		Totals	20241	1593	3,393.09	3,080.84			
		Average	1190	93.7	$199.59	181.67	16.7	15.2	
				Rates Charged					
Deciduous Fruits	California Origins	Eastern Destinations	A2909	$1.73	$519.00	$519.00	17.8c	17.8c	B-30000 M-26000
				Rates Requested					
Deciduous Fruits	California Origins	Eastern Destinations	A2909	$1.44	$432.00		14.8	14.8	B-30000

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 62, which is in the following form:

(Here follow side folio pages 398, 399, and 400)

[fol. 401] Value of Gratuitous Service Granted to Shippers of Bananas and Mixed Carloads of Bananas and Coconuts, for Transporting Caretakers in Charge of Carload Shipments to Destinations, and Return to Loading Points

	Round-trip Fare Between the Following Points		
	Between		
And	New Orleans, La., Port Chalmette, La.	Mobile, Ala.	Pensacola, Fla.
Chicago, Ill.	*$61.33	*$57.28	*$59.52
Cincinnati, Ohio	*54.55	*48.75	*48.45
Cleveland, Ohio	*71.02	*65.22	*64.92
Detroit, Mich.	*71.44	*65.64	*65.34
Grand Rapids, Mich.	*71.44	*66.70	*66.35
Bay City, Mich.	*75.20	*69.81	*70.04
Traverse City, "	*81.24	*76.12	*75.77
Mackinaw City, "	*86.50	*81.35	*81.00
Cumberland, Md.	80.40	58.54	70.26
Baltimore, Md.	80.66	74.30	73.14
Pittsburgh, Pa.	*74.70	*68.90	*68.60
Philadelphia, Pa.	90.20	81.22	80.06
Buffalo, N. Y.	*82.83	*77.03	*76.73
Syracuse, "	96.68	87.70	86.54
Albany, "	96.68	87.70	86.54
New York, "	96.68	87.70	86.54

* Winter excursion rates approximately 10% less than regular fare.

s From Mobile via M&O Cairo, I. C. from Pensacola via L&N, Mobile M&O Cairo, I. C. From Port Chalmette via G. C. L. New Orleans beyond same as shown above.

Above distances are the average short line distance from all points shown.

Rule 110 R. C. Dearborn's I. C. C. s 2 "One man in charge of each consignment of bananas in straight carloads or mixed carloads with coconuts (consisting of 1 to 5 carloads) will, at any time of year, be given free transportation for the entire trip or any portion thereof between points between which the shipments move."

"Free return transportation will be given to such caretakers of bananas, the return trip to begin within thirty days (30) after termination of such attendance's services as caretaker of the shipment."

Rule 512 provides that when the caretaker is accompanying shipper's portable heater one man will be carried free with consignments of one or more carloads.

(1) Minimum terminal expense absorbed at New Orleans $18.50 per car—Guggenheim-Goldsmith Co. 113 I. C. C. 461.

[fol. 402] My next exhibit is similar to Exhibit No. 62, except that it deals with destinations in the Western Trunk Line territory. A somewhat different average loading

is used, for the reason that the average loading shown is that found by the Commission to exist on traffic which moves over Western lines. The terminal absorption at New Orleans is somewhat different because of the fact that on west bound traffic in many instances the traffic is handled over the Illinois Central Railroad, and I have made a deduction of $1.25, which amount the Illinois Central does not have to absorb on traffic which is offered to it by docks reached by its own rails.

On page 3 of this exhibit is shown the round trip fare which is granted to caretakers in charge of bananas from Gulf ports to Western Trunk line destinations. The fares range from about $50.00 to as high as $85.00 per man.

This exhibit is fairly representative of the rate adjustment to which it is directed.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 63, which is in the following form:

(Here follows Complainant's Exhibit No. 62, marked side folio page 403)

[fol. 404] Value of Gratuitous Service Granted to Shippers of Bananas and Mixed Carloads of Bananas and Coconuts for Transporting Caretakers in Charge of Carload Shipments to Destinations and Return to Loading Points

And	Round-trip Fare Between the Following Points Between		
	New Orleans, La. Port Chalmette, La.	Mobile, Ala.	Pensacola, Fla.
Milwaukee, Wis.	*66.88	*62.83	*65.17
Marinette, Wis.	*77.33	*73.28	*75.62
Madison, Wis.	*69.78	*65.73	*68.07
St. Paul, Minn.	*81.50	*81.15	*84.00
Duluth, Minn.	*90.88	*86.83	*89.17
Menominee, Mich.	*77.48	*73.43	*75.77
Escanaba, Mich.	*81.58	*77.53	*79.87
Marquette, Mich.	*86.43	*82.38	*84.72
Ishpeming, Mich.	*85.63	*81.58	*83.92
Iron Mountain, Mich.	*80.13	*76.08	*78.42
Aberdeen, S. D.	*88.56	*88.56	*91.42
Pierre, S. D.	*90.86	*90.86	*93.71
Sioux Falls, S. D.	*75.94	*75.94	*78.79
Yankton, S. D.	*75.94	*75.94	*78.79
Kansas City, Mo.	*50.90	*56.80	*59.65
St. Louis, Mo.	*45.70	*43.80	*46.65
Omaha, Nebr.	*69.42	*69.42	*72.27
Fremont, Nebr.	*72.06	*72.06	*74.91
Dubuque, Iowa	*69.10	*68.65	*71.42
Cedar Rapids, Iowa	*69.10	*68.65	*71.42
Des Moines, Iowa	*69.42	*69.42	*72.27
Mason City, Iowa	*71.52	*71.52	*74.37
Council Bluffs, Iowa	*69.42	*69.42	*72.27
Sioux City, Iowa	*69.42	*69.42	*72.27

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Comparison of Rates and Charges Assessed for Transportation of De
Charges Assessed for Transportation in Other

Commodities	From	To	Distance
		Milwaukee, Wis.	1005
		Marinette, "	1169
	New Orleans, La.	Madison, "	1006
Bananas	Mobile, Ala.	St. Paul, Minn.	1320
	Pensacola, Fla.	Duluth, "	1390
	Port Chalmette, La.	Menominee, Mich.	1170
		Escanaba, "	1235
		Marquette, "	1323
		Ishpeming, "	1300
		Iron Mountain, Mich.	1255
		Aberdeen, S. Dak.	1656
		Pierre, S. D.	1693
		Sioux Falls, S. D.	1475
	New Orleans, La.	Yankton, S. D.	1495
Bananas	Mobile, Ala.	Kansas City, Mo.	878
	Pensacola, Fla.	St. Louis, Mo.	813
	Port Chalmette, La.	Omaha, Nebr.	1077
		Fremont, Nebr.	1114
		Dubuque, Ia.	1013
		Cedar Rapids, Ia.	1112
		Des Moines, Ia.	1153
		Mason City, Ia.	1273
		Council Blfs., Ia.	1082
		Sioux City, Ia.	1179
Totals			29196
Average			1216
Deciduous fruits	California Origins	Eastern Destinations	A2909
Deciduous fruits	California Origins	Eastern Destinations	2909

(1) Minimum absorption $18.54 per car, based upon average absorption of 20.
per car, which the Illinois Central R. R. is not compelled to absorb on traffic which

[fol. 403]

COMPLAINANT'S EXHIBIT No. 63

Complainant's Witness Ackerman

California Growers' and Shippers' Protective League

I. C. C. Docket 19130

Comparison of Rates and Charges Assessed for Transportation of Deciduous Fruits from California Producing Territory to Eastern Destinations, with Rates and Charges Assessed for Transportation in Other Territories of Commodities of Similar Transportation Characteristics

Commodities	From	To	Distance	Rates	Car Earnings (1)		Car Mile Earnings (1)		Weights
					After absorbing terminal cost at		After absorbing terminal cost at		
					Gross	New Orleans	Gross	New Orleans	
		Milwaukee, Wis.	1005	$ .86	$173.63	$155.09	17.2	15.4	
		Marinette, "	1169	1.06	214.01	195.47	17.7	16.2	
	New Orleans, La.	Madison, "	1006	.90	181.71	163.17	18.0	16.2	
Bananas	Mobile, Ala.	St. Paul, Minn.	1320	1.06	214.01	195.47	16.2	14.8	
	Pensacola, Fla.	Duluth, "	1390	1.11	224.11	205.57	16.1	14.7	
	Port Chalmette, La	Menominee, Mich.	1170	1.06	214.01	195.47	18.0	16.4	
		Escanaba, "	1235	1.17	236.22	217.68	18.9	17.4	
		Marquette, "	1323	1.16	234.20	215.66	17.7	16.3	
		Ishpeming, "	1300	1.16	234.20	215.66	17.8	16.4	
		Iron Mountain, Mich.	1255	1.11	224.11	205.57	17.8	16.3	
		Aberdeen, S. Dak.	1656	1.37	276.60	258.06	16.7	15.5	
		Pierre, S. D.	1693	1.585	320.01	301.47	18.9	17.8	G-20190
		Sioux Falls, S. D.	1475	1.11	224.11	205.57	15.1	13.9	M-20000
	New Orleans, La.	Yankton, S. D.	1495	1.295	255.40	236.86	17.	15.8	
Bananas	Mobile, Ala.	Kansas City, Mo.	878	.99	199.88	181.26	22.7	20.6	
	Pensacola, Fla.	St. Louis, Mo.	813	.75	151.43	132.89	18.6	16.3	
	Port Chalmette, La.	Omaha, Nebr.	1077	1.055	213.00	194.46	19.7	18.	
		Fremont, Nebr.	1114	1.11	224.11	205.57	20.1	18.4	
		Dubuque, Ia.	1013	.90	181.71	163.17	17.9	15.9	
		Cedar Rapids, Ia.	1112	.99	199.88	181.26	17.9	16.3	
		Des Moines, Ia.	1153	1.005	202.91	184.37	17.5	15.9	
		Mason City, Ia.	1273	1.035	208.97	190.43	16.4	14.9	
		Council Blfs., Ia.	1082	1.055	213.00	194.46	19.6	17.9	
		Sioux City, Ia.	1179	1.055	213.00	194.46	18	16.4	
Totals			29196	2592.5	$5,234.22	$4,789.10			
Average			1216	108.	218.09	199.54	17.9	16.4	
				Rates Charged					
Deciduous fruits	California Origins	Eastern Destinations	A2909	$1.73	$519.00	519.00	17.8c	17.8c	B-30000 M-26000
				Rates Requested					
Deciduous fruits	California Origins	Eastern Destinations	2909	1.44	432.00		14.8	14.8	B-30000

(1) Minimum absorption $18.54 per car, based upon average absorption of 20.79 per car found by the Commission in Dawson Product Co. V. A. & V. Ry. Co., 101 I. C. C. 197, less $2.25 per car, which the Illinois Central R. R. is not compelled to absorb on traffic which is received from docks reached by its own rails.

* Winter round trip excursion rates, about 10% less than regular fare. C. J. Maguire, I. C. C. 714.

Rule 110, R. C. Dearborn's I. C. C. #2: "One man in charge of each consignment of Bananas in straight carloads or mixed carloads with cocoanuts (consisting of 1 to 5 carloads) will, at any time of year, be given free transportation for the entire trip or any portion thereof between points which the shipments move.

"Free return transportation will be given to such caretakers of bananas, the return trip to begin within thirty days (30) after termination of such Attendance's services as caretaker of the shipment." Rule 512 provides that whenever caretaker is accompanying shipper's portable heater one man will be carried free with consignments of one or more carloads.

[fol. 405] Average distances for which rates apply as shown in my Exhibits Nos. 62 and 63 are materially less than the average distance which the California deciduous fruit is handed to transcontinental points.

In my opinion, it is not proper to make a direct comparison of these banana rates with the transcontinental deciduous fruit rates, as far as the unit of earnings is concerned, for the reason that, as the Commission has often stated and the carriers have long recognized, as the distance increases the rate per ton mile should decrease; therefore, some allowance should be made in the gross ton mile earnings for the additional distance which the Pacific Coast transcontinental traffic moves. However, taking the average of all of the banana rates which I have shown, and which are fairly representative, the average of all those rates, based upon a mathematical distance by use of the short routes, is approximatey the same and in some instances slightly less than the average gross ton mile earnings which deciduous fruit from California to the East yields on a basis of an average actual distance of 2909 miles.

My next exhibit deals with rates on bananas and cocoanuts in straight or mixed carloads. Coconuts to the Pacific Coast do not usually move in straight carloads, but they do move in mixed carloads with bananas. I have shown the average distance found to be proper and then I have computed it to Pacific Coast destinations by the various routes over which the traffic moves from Gulf ports to Pacific Coast destinations. I have used all workabe routes and the traffic does move over these routes. In the winter time the traffic moves over the Southern route, taking ad-

vantage of the warmer weather by that route, and in the [fol. 406] summer time it moves over the Northern route to take advantage of the cooler climate in the northern part of the country.

Page 5 of this exhibit shows that the gross ton earnings on the gross weight are 3.63 mills. After making allowance for terminal absorption at New Orleans, the gross ton mile earnings are 3.45 mills, which is less than the gross ton mile earnings yielded by the present rates from California to the East and also less than the ton mile earnings which complainant is asking in this case.

Gross ton mile earnings do not include the empty return haul in any instance, either in the case of bananas or in the case of deciduous fruits.

Page 5 of this exhibit shows that the average distance over which these rates apply is 2964.8 miles, or very close to the average haul of California deciduous fruit to transcontinental points. The haul is comparable to the deciduous haul. The car mile earnings are less than the deciduous fruit car mile earnings and the car earnings are also less than the deciduous fruit car earnings. At the bottom of page 5 are shown the round trip fares between Gulf ports and the Pacific Coast destinations. That is the value of the gratuitous service rendered to the shippers of coconuts and bananas moving to transcontinental destinations.

I know of no justification for according the growers of fruit in Central America a lower basis of transportation charges than is accorded the shippers of deciduous fruits from California to the East. I know of no transportation conditions which would justify lower earnings on bananas or coconuts than on deciduous fruits.

I think that this exhibit justifies the rate claimed of $1.44 [fol. 407] per hundred pounds.

Thereupon there was offered and admitted in evidence Complainant's Exhibit No. 64, which is in the following form:

(Here follows Complainant's Exhibit No. 64, marked side folio pages 408, 409, 410, 411, and 412)

[fol. 408]

EXHIBIT No. 64

Complainants' Witness: Ackerman

California Growers' and Shippers' Protective League

I. C. C. Docket 19130

Comparison of Rates and Charges Assessed for Transportation of Deciduous Fruits from California Producing Territory to Eastern Destinations with Rates and Charges Assessed for Transportation in the Reverse Direction of Commodities of Similar Transportation Characteristics

	Routing, rates charged	Distance	Rates	Weights	Car earnings Gross	Car earnings (1) After absorbing minimum terminal charges at New Orleans	Car mile earnings Gross	Car mile earnings (1) After absorbing terminal charges at New Orleans	Gross ton mile earnings Gross	Gross ton mile earnings (1) After absorbing terminal charges at New Orleans	Tariff citations
Deciduous Fruits from California Origins to Eastern Destinations	(a)	A-2909	$1.73	B-30000 M-26000	$519.99		17.8c		4.46	4.46	(1)
	A	A-2909	1.44	B 30000	Rates Requested 432.00		14.8		3.71	3.71	
					Compared Rates & Charges						
Bananas & Coconuts in straight or mixed carloads from New Orleans, La. Mobile, Ala. Gulfport, Miss. to Portland, Ore.	SP-El Paso	3,200.9	$1.875	G 20190 M-20000	$378.56	$360.02	11.8	11.2	3.36	3.20	(5)
	IC-Memphis-Frisco KC-U.P.	2,800.1					13.1	12.5	3.74	3.56	
	IC-Memphis-CB&Q NP-Spokane-SP&S	2,906.1					13.0	12.3	3.71	3.52	
	IC-Memphis-CB&Q GN-Spokane-SP&S	3,053.6					12.3	11.7	3.53	3.35	
	T&P-Ft. Worth-FW& DC-C&S-NP-Spokane SP&S	3,120.6					12.1	11.5	3.47	3.28	
	T&P-Ft. Worth-FW DC-C&S-GE-Spokane SP&S	3,269.2					11.5	11.0	3.29	3.13	
[fol. 409] Bananas & Coconuts in straight or mixed carloads from New Orleans, La. Mobile, Ala. Gulfport, Miss. to Portland, Ore.	IC-CHGO.-C&NW-GN-Spokane-SP&S	3106.5					12.1	11.5	3.47	3.30	
	IC-CHGO.-C&NW.-NP-Spokane-SP&S	3175.6	$1.875	G 20190 M-20000	$378.56	$360.02	11.9	11.3	3.39	3.23	(5)
	ICMChgo-CM&STP-Spokane-SP&S	3153.2					12.0	11.4	3.43	3.25	
	Average	3096.2					12.2	11.6	3.48	3.31	
Bananas & Coconuts in straight or from New Orleans, La. Mobile, Ala. Gulfport, Miss. to Spokane, Wash.	SP-El Paso-Portland-SP&S	3578.4	$1.875	G-20190 M-20000	$378.56	$360.02	10.5	10.0	3.01	2.88	(5)
	IC-Memphis-Frisco K.Cy.-UP	2904.3					13.0	12.3	3.71	3.52	
	IC-Memphis-Frisco CB&Q-Laurel NP	2528.6					14.9	14.2	4.26	4.05	
	IC-Memphis-CB&Q Laurel-GN	2676.4					14.1	13.4	4.03	3.83	
	T&P-Fort Worth FW&DC-C&S Laurel NP	2743.8					13.7	13.1	3.93	3.73	
	T&P-Ft. Worth FW & DC-C&S-Laurel-GN	2891.7					13.0	12.4	3.72	3.54	
	IC-Chgo-C&NW St. Paul-GN	2729.1					13.8	13.1	3.95	3.75	
	IC-Chgo-C&NW St. Paul-NP	2798.0					13.5	12.8	3.85	3.66	

Comparison of Rates and Charges Assessed for Transportation of Deciduous Fruits from California Producing Territory to Eastern Destinations with Rates and Charges Assessed for Transportation in the Reverse Direction of Commodities of Similar Transportation Characteristics

	Routing, rates charged	Distance	Rates	Weights	Car earnings: Gross	Car earnings: (1) After absorbing minimum terminal charges at New Orleans	Car mile earnings: Gross	Car mile earnings: (1) After absorbing terminal charges at New Orleans	Gross ton mile earnings: Gross	Gross ton mile earnings: (1) After absorbing terminal charges at New Orleans	Tariff citations
Deciduous Fruits from California Origins to Eastern Destinations	(a)	A-2909	$1.73	B-30000 M-26000	$519.99		17.8c		4.46	4.46	(1)
	A	A-2909	1.44	B 30000	Rates Requested 432.00		14.8		3.71	3.71	
					Compared Rates & Charges						
Bananas & Coconuts in straight or mixed carloads from New Orleans, La. Mobile, Ala. Gulfport, Miss. to Portland, Ore.	SP-El Paso	3,200.9					11.8	11.2	3.36	3.20	
	IC-Memphis-Frisco KC-U.P.	2,800.1					13.1	12.5	3.74	3.56	
	IC-Memphis-CB&Q NP-Spokane-SP&S	2,906.1									
	IC-Memphis-CB&Q GN-Spokane-SP&S	3,053.6	$1.875	G 20190 M-20000	$378.56	$360.02	13.0 12.3	12.3 11.7	3.71 3.53	3.52 3.35	(5)
	T&P-Ft. Worth-FW& DC-C&S-NP-Spokane SP&S	3,120.6					12.1	11.5	3.47	3.28	
[fol. 409]	T&P-Ft. Worth-FW DC-C&S-GE-Spokane SP&S	3,269.2					11.5	11.0	3.29	3.13	
Bananas & Coconuts in straight or mixed carloads from New Orleans, La. Mobile, Ala. Gulfport, Miss. to Portland, Ore.	IC-CHGO.-C&NW-GN-Spokane-SP&S	3106.5					12.1	11.5	3.47	3.30	
	IC-CHGO.-C&NW.-NP-Spokane-SP&S	3175.6	$1.875	G 20190 M-20000	$378.56	$360.02	11.9	11.3	3.39	3.23	(5)
	ICMChgo-CM&STP-Spokane-SP&S	3153.2					12.0	11.4	3.43	3.25	
Average		3096.2					12.2	11.6	3.48	3.31	
Bananas & Coconuts in straight or mixed carloads from New Orleans, La. Mobile, Ala. Gulfport, Miss. to Spokane, Wash.	SP-El Paso-Portland-SP&S	3578.4					10.5	10.0	3.01	2.86	
	IC-Memphis-Frisco K.Cy.-UP	2904.3					13.0	12.3	3.71	3.52	
	IC-Memphis-Frisco CB&Q-Laurel NP	2528.6					14.9	14.2	4.26	4.05	
	IC-Memphis-CB&Q Laurel-GN	2676.4					14.1	13.4	4.03	3.83	
	T&P-Fort Worth FW&DC-C&S Laurel NP	2743.8	$1.875	G-20190 M-20000	$378.56	$360.02	13.7	13.1	3.93	3.73	(5)
	T&P-Ft. Worth FW & DC-C&S-Laurel-GN	2891.7					13.0	12.4	3.72	3.54	
	IC-Chgo-C&NW St. Paul-GN	2729.1					13.8	13.1	3.95	3.75	
	IC-Chgo-C&NW St. Paul-NP	2798.0					13.5	12.8	3.85	3.66	
	IC-Chgo-CM&STP	2775.7					13.6	12.9	3.88	3.33	
Average		2847.3					13.2	12.6	3.78	3.60	

[fol. 410]

Bananas & Coconuts in straight or mixed carloads from	SP-EL Paso-Portland-NP	3388.2	11.1	10.6	3.18	3.03
	IC-Memphis-Frisco Portland-GN	3243.4	11.6	11.1	3.32	3.16
	IC-Memphis-Frisco-K.Cy. CB&Q-Laurel NP	2929.6	12.9	12.2	3.68	3.50
	IC-Memphis Frisco-K. Cy. CB& Q-Laurel GN	3015.5	12.5	11.9	3.57	3.40

FOLD OUT IS TOO LARGE TO BE FILMED

[fol. 413]

EXHIBIT No. 65

Complainant's Witness Ackerman

Summary Showing Average Level of Rates Assessed for Transportation of Bananas, Carloads, from Gulf Ports to Destinations in Central Freight Association, Eastern Trunk Line, Western Trunk Line, and Transcontinental Territories Compared with Weighted Average Rates and Charges Assessed for Transporting Deciduous Fruits from California Producing Territory to Eastern Destinations

Commodity	From	To	Number of rates	Total car charges: Total miles	Total rates	Gross	After absorbing terminal charge at New Orleans	Gross	Average car mile earnings after absorption at New Orleans	Gross Mills	Average gross ton mile earnings after absorption at New Orleans
Bananas	Gulf Ports..	Transcontinental Territory.	129	3,824.67	$241.875	$48,834.24	$46,442.58				
		E.T.L. and C.F.A....	18	20,241	15.93	3,393.00	3,080.84				
		W.T.L.....	24	29,196	25.925	5,234.22	4,789.10				
		Totals....	171	387,410.8	283.73	$57,461.55	$54,240.52				
		Average.		2,525.7	165.9	336.03	316.98	13.3	12.5	3.79	3.57
				From California Rates Charged							
Deciduous Fruits..	Calif. Origins....	Eastern Destinations.		A 2909	$1.73	$519.00		17.8c	17.8c	4.46	4.46
				Rates Requested							
Deciduous...	Calif. Origins....	Eastern Destinations.		A 2909	1.44	432.00		14.8	14.8	3.71	3.71

[fol. 412a] My next exhibit is likewise directed to rates upon bananas. It is a summary of the rates shown on Exhibits Nos. 62 to 64, inclusive.

This exhibit shows the average level of rates on bananas to Eastern Trunk Line, Central Freight Association, Western Trunk Line territory and transcontinental territory (and to transcontinental territory also, including cocoanuts, although the exhibit does not so show).

I wish in particular to direct attention to the gross ton mile earnings based upon the average mathematical distance to the destinations shown in preceding exhibits, which yield 3.79 mills, and 3.57 mills on a basis of the rates after making allowance for terminal deduction at New Orleans. This should be contrasted with 4.46 mills under the present $1.73 rate from California to eastern destinations and 3.71 mills on the basis of the rate of $1.44.

Thereupon there was offered and admitted in evidence, Complainant's Exhibit No. 65, which is in the following form:

(Here follows Complainant's Exhibit No. 65, marked side folio page 413)

[fol. 414] My next exhibit is similar to the previous exhibits, except that it deals with pineapples from Gulf ports to Pacific Coast destinations.

Pineapples are highly perishable. They require the same class of equipment as do the deciduous fruits or the bananas. They are imported through the same ports, are subject to the same absorptions and are handled in practically the same manner to Pacific Coast destinations. The rates also include the free return of messengers in charge of the shipments, as well as the free transportation for the outgoing movement.

With respect to the values of pineapples, for the 1926 season the prices, wholesale, at Gulf ports ranged from $2.44 to $4.18 per 80 pound crate, which, computed in terms of dollars per ton, averaged from $61.00 to $104.50 per ton for the year 1926.

I do not think it can be contended that the rates on pineapples from the Gulf ports to Pacific Coast destinations are influenced by water competition or by competition of

pineapples coming from the Hawaiian Islands. My information is that pineapples from the Isle of Pines and Cuba come on the market at a different period of the year from the pineapples produced in Hawaii, and that there is very slight, if any, competition between the pineapples from those two different districts.

This exhibit is similar in structure to Exhibit No. 63 and on the last page it shows the extent of the gratuitous service rendered to caretakers in charge of the shipments.

Thereupon there was offered and received in evidence Complainant's Exhibit No. 66, which is in the following form:

(Here follows Complainant's Exhibit No. 66, marked side folio pages 415, 416, 417, 418, 419, and 420)

[folio 420] ITEM 2690 H. G. TOLL'S I. C. C. 1177
APPLICABLE TO SOUTH COAST

NOTE.—(Provisions of this note do not apply in connection with Louisville and Nashville Railroad Company.) With one or more cars of Pineapples, one man in charge of same will be passed in both directions; return trip must begin within seven (7) days after arrival at destination.
From Gulfport and Mobile via, El Paso routing is via L&N through New Orleans. Via Memphis, from Gulfport, via I. C. to Jackson. From Mobile via L&N to New Orleans. Via Chicago from Mobile via Cairo, Ill.

VALUE OF GRATUITOUS SERVICE GRANTED TO SHIPPERS OF PINEAPPLES FOR TRANSPORTING CARETAKER IN CHARGE OF CARLOAD SHIPMENTS TO DESTINATIONS AND RETURN TO LOADING POINT

ROUND TRIP FARE BETWEEN THE FOLLOWING POINTS

And	Between New Orleans, La.	Mobile, Ala.	Gulfport, Miss.
Portland, Ore.	$165.60	$181.26	$166.24
Spokane, Wash.	172.16	170.80	175.80
Seattle, Wash.	172.16	181.26	175.80
Vancouver, B. C.	172.16	181.26	175.80
Los Angeles, Calif.	143.78	143.78	146.42
San Francisco, Calif.	143.78	143.78	146.42

Tariff Citation
C. J. Maguires' I. C. C. 714
" I. C. C. 719
" I. C. C. 271

[fol. 421] My next exhibit deals with rates on pineapples from Jacksonville, Florida, to Pacific Coast destinations. This is similar to Exhibit No. 66, the only difference being that no allowance is to be made for terminal absorptions. If there are any terminal absorptions at Jacksonville (and there may be), I have not been able to find out what the practice there is.

[fol. 415]

EXHIBIT No. 66

Complainant's Witness Ackerman

California Growers' and Shippers' Protective

I. C. C. Docket 19130

Comparison of Rates and Charges Assessed for Transportation of Deciduous Fruits from Californ
Charges Assessed for Transportation in the Reverse Direction of Commodities

	Routing	Distance	Rates	Weights	Car Earnings Gross	(1) After abs Terminal at New O
					Rates charged	
Deciduous Fruits From California Origins To Eastern Destinations	A	A 2909	$1.73	B-30000 M-26000	$519.00	$519.
					Rates requeste	
	A	A 2909	1.44	B-30000	432.00	432.
					Compared Rates and	
Pineapples From Mobile, Ala. New Orleans, La. To Portland, Oregon	El Paso-SP-IC-Memphis-Frisco K.Cy.-U.P.	3202.1 2900.6	$2.03	J-24000 M-20000	$487.20	$468.
	IC-Memphis-Frisco K.CY.-CB&Q.Laurel NP-S.P.&S.	2926.7				
	IC-Memphis-Frisco K.CY.-CB&Q.Laurel-GN-SP&S	3074.1				
	T&P-Fr.Worth-FW-D.C.-Denver CB&Q Laurel-NP-SP&S	3121.8				
[fol. 416]	T&P-Ft.Worth-FW&DC Denver-CB&Q-Laurel GN-S.P.&S.	3233.8				
Pineapples From Mobile, Ala. New Orleans, La. To Portland, Ore.	IC-Chgo-CN&W St.Paul-GN-SPS-	3104.9	$2.03	J-24000 M-20000	$487.20	$468
	IC-Chgo-CN&W St. Paul-NP-SP&S	3173.9				
	IC-Chgo-CM&ST. P-S.P.&S.	3151.5				
Average...		3043.2				
Pineapples From Mobile, Ala. New Orleans To Vancouver, B. C.	IC-Memphis-Frisco K.Cy.-UP-GN-	3237.1	$2.03	J-24000 M-20000	$487.20	$4
	IC-Memphis-Frisco K.Cy-CB&Q-Laurel GN	3124.6				
	IC-Memphis-Frisco K.Cy-CB&Q-Laurel N.P.	3122.6				
	T&P-Ft.Worth-FW-DC-Denver-CB&Q-Laurel N.P.	3318.4				
	T&P-Ft.Worth-FW-DC-Denver-CB&Q-					

[fol. 415]

EXHIBIT No. 66

Complainant's Witness Ackerman

California Growers' and Shippers' Protective League

I. C. C. Docket 19130

Comparison of Rates and Charges Assessed for Transportation of Deciduous Fruits from California Producing Territory to Eastern Destinations with Rates and Charges Assessed for Transportation in the Reverse Direction of Commodities of Similar Transportation Characteristics

	Routing	Distance	Rates	Weights	Car Earnings		Car Mile Earnings		Gross Ton Mile Earnings		Tariff Citation
					Gross	(1) After absorbing Terminal charges at New Orleans	Gross	(1) After absorbing terminal charges at New Orleans	Gross Mills	(1) After absorbing terminal charges at New Orleans Mills	
					Rates charged						
Deciduous Fruits From California Origins To Eastern Destinations	A	A 2909	$1.73	B-30000 M-26000	$519.00	$519.00	17.8c		4.46	4.46	(1)
					Rates requested						
	A	A 2909	1.44	B-30000	432.00	432.00	14.8c		3.71	3.71	
					Compared Rates and Charges						
Pineapples From Mobile, Ala. New Orleans, La. To Portland, Oregon	El Paso-SP-IC-Memphis-Frisco K.Cy.-U.P.	3202.1	$2.03	J-24000 M-20000	$487.20	$468.66	15.2	14.6c	4.11	3.95	(5)
		2900.6					16.7	16.1	4.53	4.36	
	IC-Memphis-Frisco K.CY.-CB&Q.Laurel NP-S.P.&S.	2926.7					16.6	16.0	4.49	4.32	
	IC-Memphis-Frisco K.CY.-CB&Q.Laurel-GN-SP&S	3074.1					15.8	15.2	4.28	4.12	
	T&P-Fr.Worth-FW-D.C.-Denver CB&Q Laurel-NP-SP&S	3121.8					15.6	15.0	4.21	4.05	
[fol. 416]											
Pineapples From Mobile, Ala. New Orleans, La. To Portland, Ore.	T&P-Ft.Worth-FW&DC Denver-CB&Q-Laurel GN-S.P.&S.	3233.8	$2.03	J-24000 M-20000	$487.20	$468.66	15.c	14.4c	4.07	3.91	(5)
	IC-Chgo-CN&W St.Paul-GN-SPS-	3104.9					16.0	15.0	4.24	4.07	
	IC-Chgo-CN&W St. Paul-NP-SP&S	3173.9					15.3	14.7	4.14	3.99	
	IC-Chgo-CM&ST. P-S.P.&S.	3151.5					15.4	14.8	4.17	4.01	
Average...		3043.2					16.0	15.4	4.32	4.16	
Pineapples From Mobile, Ala. New Orleans To [illegible]	IC-Memphis-Frisco K.Cy.-UP-GN-	3237.1	$2.03	J-24000 M-20000	$487.20	$468.66	15.c	14.4	4.06	3.91	(5)
	IC-Memphis-Frisco K.Cy-CB&Q-Laurel GN	3124.6					15.5	14.9	4.21	4.05	
	IC-Memphis-Frisco K.Cy-CB&Q-Laurel N.P.	3122.6					15.6	15.	4.21	4.05	
	T&P-Ft.Worth-FW-DC-Denver-CB&Q-Laurel N.P.	3318.4					14.6	14.1	3.96	3.81	

	Routing	Distance	Rates	Weights	Car Earnings Gross	Car Earnings (1) After absorbing Terminal charges at New Orleans	Car-mile Earnings Gross	Car-mile Earnings (1) After absorbing terminal charges at New Orleans	Gross Mills	(1) After absorbing terminal charges at New Orleans Mills	Tariff Citation
Deciduous Fruits From California Origins To Eastern Destinations	A	A 2909	$1.73	B-30000 M-26000	$519.00	$519.00	17.8c		4.46	4.46	(1)
					Rates requested						
	A	A 2909	1.44	B-30000	432.00	432.00	14.8c		3.71	3.71	
					Compared Rates and Charges						
Pineapples From Mobile, Ala. New Orleans, La. To Portland, Oregon	El Paso-SP-IC-Memphis-Frisco K.Cy.-U.P.	3202.1	$2.03	J-24000 M-20000	$487.20	$468.66	15.2	14.6c	4.11	3.95	(5)
		2900.6					16.7	16.1	4.53	4.36	
	IC-Memphis-Frisco K.CY.-CB&Q.Laurel NP-S.P.&S.	2926.7					16.6	16.0	4.49	4.32	
	IC-Memphis-Frisco K.CY.-CB&Q.Laurel-GN-SP&S	3074.1					15.8	15.2	4.28	4.12	
	T&P-Fr.Worth-FW-D.C.-Denver CB&Q Laurel-NP-SP&S	3121.8					15.6	15.0	4.21	4.05	
[fol. 416]	T&P-Ft.Worth-FW&DC Denver-CB&Q-Laurel GN-S.P.&S.	3233.8					15.c	14.4c	4.07	3.91	
Pineapples From Mobile, Ala. New Orleans, La. To Portland, Ore.	IC-Chgo-CN&W St.Paul-GN-SPS-	3104.9	$2.03	J-24000 M-20000	$487.20	$468.66	16.0	15.0	4.24	4.07	(5)
	IC-Chgo-CN&W St. Paul-NP-SP&S	3173.9					15.3	14.7	4.14	3.99	
	IC-Chgo-CM&ST. P-S.P.&S.	3151.5					15.4	14.8	4.17	4.01	
Average...		3043.2					16.0	15.4	4.32	4.16	
Pineapples From Mobile, Ala. New Orleans To Vancouver, B. C.	IC-Memphis-Frisco K.Cy.-UP-GN-	3237.1	$2.03	J-24000 M-20000	$487.20	$468.66	15.c	14.4	4.06	3.91	(5)
	IC-Memphis-Frisco K.Cy-CB&Q-Laurel GN	3124.6					15.5	14.9	4.21	4.05	
	IC-Memphis-Frisco K.Cy-CB&Q-Laurel N.P.	3122.6					15.6	15.	4.21	4.05	
	T&P-Ft.Worth-FW-DC-Denver-CB&Q-Laurel N.P.	3318.4					14.6	14.1	3.96	3.81	
	T&P-Ft.Worth-FW-DC-Denver-CB&Q-Laurel-G.N.	3283.9					14.8	14.2	4.00	3.85	
	IC-Chgo-C&NW-St.Paul-GN	3155.0					15.4	14.8	4.17	4.01	
	IC-Chgo-C&NW-St.Paul-NP	3369.4					14.4	13.9	3.90	3.75	
Average...		3230.2					15.0	14.5	4.07	3.92	

Compared Rates & Charges

[fol. 417] Pineapples From Mobile, Ala. New Orleans, La. To Los Angeles, Calif.	2076.7	$2.03	J-24000 M-20000	$487.20	$468.66	23.4c	22.5c	6.34	6.09	(6)
	2200.6					22.1	21.2	5.98	5.75	
	2377.3					20.4	19.7	5.53	5.32	
	2255.7					21.5	20.7	5.83	5.61	
Average	2227.5					21.8	21.0	5.91	5.68	
Pineapples From Mobile, Ala. New Orleans, La. To San Francisco, Calif.	2544.3	$2.03	J-24000 M-20000	$487.20	$468.66	19.1	18.4	5.17	4.97	(6)
	2619.5					18.5	17.8	5.02	4.83	
	2796.2					17.5	16.7	4.70	4.52	
	2674.6					17.8	17.5	4.92	4.36	
Average	2658.6					17.9	17.6	4.95	4.76	
Pineapples From Mobile, Ala. New Orleans, La. To Spokane, Wash.	2925.2	$1.875	J-24000 M-20000	$450.00	$431.46	15.3	14.7	4.15	3.98	(5)
	2549.2					17.6	16.9	4.37	4.57	
	2696.7					16.6	15.9	4.50	4.32	
	2745.0					16.3	15.7	4.43	4.24	

Compared Rates and Charges

[fol. 418] Pineapples From Mobile, Ala. New Orleans, Ala. To Spokane, Wash.	2856.3	$1.875	J-24000 M-20000	$450.00	$431.46	15.7c	15.1c	4.25	4.08	(5)
	2796.4					16.0	15.4	4.34	4.17	
	2727.4					16.4	15.8	4.45	4.27	
	2774.0					16.2	15.5	4.38	4.20	
Average	2758.8					16.3	15.6	4.40	4.22	
Pineapples From Mobile, Ala. New Orleans, La. to Seattle, Wash.	3384.4	$2.03	J-24000 M-20000	$487.20	$468.66	14.3	13.8	3.88	3.74	(5)
	3264.3					14.9	14.3	4.03	3.88	
	2950.2					16.5	15.8	4.46	4.29	
	3036.1					16.0	15.4	4.33	4.17	
	3145.9					15.4	14.8	4.18	4.02	
	3195.4					15.2	14.6	4.12	3.96	
	3066.5					15.8	15.2	4.29	4.13	

[fol. 419] Pineapples from Mobile, Ala. New Orleans, La. To Seattle, Wash.	3197.4	$2.03	J-24000 M-20000	$487.20	$468.66	15.2c	14.6	4.11	3.96	(5)
	3128.3					15.5	14.9	4.20	4.04	
Average	3152.0					15.4	14.8	4.17	4.01	
Mobile, Ala. Pineapples, New to Orleans, La. Average to all Pacific Coast Destinations	2938.6			479.94	461.40	16.3	15.6	4.48	4.31	

Routing from Mobile via L. & N. R. R. to New Orleans, thence same as shown above.

' Minimum absorption $18.54 per car based upon average absorpton of $20.79 per car of bananas found by the Commission in Dawson Produce Co. V-A&V Ry. Co., 101-I. C. C. 197, less $2.25) per car which the Illinois Center R. R. is not compelled to absorb on Traffic which is received from docks reached by its own rails.

ITEM 2690 H. C. TOLL'S I. C. C. 1176

APPLICABLE TO NORTH COAST

NOTE.—(Provisions of this note do not apply in connection with Louisville and Nashville Railroad Company). With one or more cars of Pineapples one man in charge of same will be passed both directions; return trip must begin within thirty (30) days after arrival at destination.

[fol. 422]

EXHIBIT No. 67

Complainant's Witness Ackerman

California Growers' and Shippers' Protective League

I. C. C. Docket 19130

Comparison of Rates and Charges Assessed for Transportation of Deciduous Fruits from California Producing to Eastern Destinations with Rates and Charges Assessed for Transportation in the Reverse Direction of Commodities of Similar Transportation Characteristics

Commodity	From	To	Routing	Distance	Rates	Weights	Car earnings	Car-mile earnings	Gross ton-mile earnings Mills	Tariff citation
			Rates Charged							
Deciduous Fruits	California Origins	Eastern Destinations	A	A2909	$1.73	B30000 M26000	$519.00	17.8c	4.46	....
			Rates Requested							
Deciduous Fruits	California Origins	Eastern Destinations	A	A2909	1.44	B30000	$432.00	14.8	3.71	....
			Compared Rates and Charges							
Pineapples	Jacksonville	Los Angeles Calif		2618.8				18.6	5.02	
				2742.7	2.03	J-24000	$487.20	17.7	4.79	
				2919.4		M-20000				
				2797.8						
Average				2769.6				17.5	4.75	
[fol. 423] Pineapples	Jacksonville	San Francisco Calif		3086.4				15.7c	4.26	
				3161.6	$2.03	J-24000	$487.20	15.4	4.16	(6)
				3338.3		M-20000		14.5	3.94	
				3216.7				15.1	4.09	
Average				3200.7				15.2	4.11	
				3217.2				13.9	3.78	
				2988.0				15.0	4.07	
				2840.2				15.8	4.28	
Pineapples	Jacksonville, Fla.	Spokane, Wash		3201.2	$1.875	J-24000	$450.00	14.0	3.79	(5)
				3349.0		M-20000		13.4	3.63	
				2925.6				15.3	4.15	
[fol. 424]				2994.7				15.0	4.06	
				2972.3	$1.875	J-24000 M-20000	$450.00	15.1c	4.09	(5)
Average				3061.				14.7	3.97	
				3744.2				13.	3.51	
				3594.7				13.5	3.66	
				3365.5				14.4	3.91	
Pineapples	Jacksonville, Fla.	Portland, Ore		3217.7				15.1	4.09	
				3578.7	$2.03	J-24000	$487.20	13.6	3.67	(5)
				3726.5		M-20000		13	3.53	
				3301.1				14.7	3.98	
				3372.2				14.4	3.90	
				3369.8				14.4	3.90	

Average			3474.4				14.	3.78	
[fol. 425]			3926.5				12.4	3.35	
			3926.5				12.4	3.35	
			3327.1				14.6	3.95	
			3241.2				15.	4.09	
Pineapples	Jacksonville, Fla.	Seattle, Wash.	3556.3	$2.03	J-24000	$487.20	13.6	3.70	(5)
			3602.2		M-20000		13.5	3.65	
			3688.1				13.2	3.57	
			3264.7				14.9	4.03	
			3394.7				14.3	3.87	
			3281.6				14.8	4.01	
Average			3520.9	$2.03	J-24000	$487.20	13.8	3.73	
[fol. 426]			3528.6				13.8c	3.73	
			3415.6				14.2	3.85	
			3413.6				14.2	3.85	
Pineapples	Jacksonville, Fla.	Vancouver, B. C.	3776.6	$2.03	J-24000	$487.20	12.9	3.48	(5)
			3776.6		M-20000		12.9	3.48	
			3353.2				14.5	3.92	
			3568.1				13.6	3.69	
Average			3547.				13.7	3.71	
Jacksonville Average to all Pacific Coast Points			3325.7			480.11	13.5	3.90	
Mobile, Ala. New Orleans, La. Jacksonville, Fla.	" " " " "		3069.7			480.02	15.6	4.22	

[fol. 427]

Item 2690, H. G. Toll's I. C. C. 1178

Applicable to North Coast

NOTE—(Provisons of this note do not apply in connection with Louisville and Nashville Railroad Company.) With one or more cars of Pineapples, one man in charge of same will be passed in both directions; return trip must begin within Thirty (30) days after arrival at destination.

Item 2690, H. G. Toll's I. C. C. 1177

Applicable to South Coast

NOTE—(Provisions of this note do not apply in connection with Louisville and Nashville Railroad Company.) With one or more cars of Pineapples, one man in charge of same will be passed in both directions; return trip must begin within seven (7) days after arrival at destination.

Value of Gratuitous Service Granted to Shippers of Pineapples for Transporting Caretakers in Charge of Carload Shipments to Destination and Return to Loading Point

Round Trip Fare Between Jacksonville, Fla. and

Portland, Ore.	$ 201.86
Spokane, Wash.	190.95
Seattle, "	201.86
Vancouver, B. C.	201.86
Los Angeles, Calif.	178.64
San Francisco, "	178.64

Tariff Citation: W. H. Howard's I. C. C. 894.

[fol. 429]

EXHIBIT No. 68

Complainant's Witness Ackerman

"California Growers' and Shippers' Protective League

I. C. C. Docket 19130

Comparison of Rates and Charges Assessed for Transportation of Deciduous Fruits from California Producing Territory to Eastern Destinations with Rates and Charges Assessed for Transportation in Other Territories of Commodities of Similar Transportation Characteristics

Commodity	From	To	Routing	Distance	Rates	Weights	Car earnings Gross	Car earnings (1) After absorbing minimum terminal charges at New Orleans	Car mile earnings Gross	Car mile earnings (1) After absorbing minimum terminal charges at New Orleans	Tariff Citation
			Rate Charged								
Deciduous Fruits	California Origins	Eastern Destinations	A	A-2909	$1.73	B-30000 M-26000	$519.00	$519.00	17.8	17.8	(1)
			Rate Requested								
Deciduous Fruits	California Origins	Eastern Destinations	A	A-2909	$1.44	B-30000	$432.00	$432.00	14.8	14.8	.....
			Compared Rates and Charges								
Pineapples	New Orleans, La.	Chicago, Ill.	Ic (*)	920	.72	J-24000 M-20000	$172.80	$154.30	18.7	16.7	(4)
	Mobile, Ala.	Cincinnati, Ohio	L&N	849	.62		148.80	130.30	17.5	15.3	
	Pensacola, Fla.	Cleveland, "	L&N-Big 4	1111	.75		180.00	161.50	16.2	14.5	
	Port Chalmette, La.	Detroit, Mich.	L&N-PRR-DTSL	1194	.75		180.00	161.50	15.0	13.5	
		Grand Rapids, Mich.	L&N-Big 4-NYC	1108	.83		199.20	180.70	17.9	16.3	
		Bay City, "	L&N-Big 4-MC	1208	.83		199.20	180.70	16.40	14.9	
		Traverse City, "	L&N-Big 4-NYC-PRR	1253	.975		234.00	215.50	18.6	17.1	
		Mackinaw City, "	L&N-Big 4-NYC-PRR	1332	.975		234.00	215.50	16.1	16.1	
		Toronto, Ont.	L&N-Big 4-NYC-MC-THB&CP	1410	.83		199.20	180.70	14.1	12.8	
		Pittsburgh, Pa.	Sou. Wash.-PRR X	1160	.83		199.20	180.70	17.1	15.5	
[fol. 430]		Syracuse, N. Y.	Sou.PRR-NY-NYC	1413	1.01		242.40	223.90	17.1	15.8	
Totals				12958	9.120		2188.80	1985.30	.....	.....	
Average				1178	.829		198.98	180.48	16.8	15.3	

(*) From Mobile via M&O Cairo, I.C. from Pensacola Via L&N, Mobile, M&O Cairo, I.C. from Port Chalmette via G.C.L. New Orleans beyond same as shown above.
Above distances are the average short line distance from all points shown.
(1) Minimum Terminal expense absorbed at New Orleans $18.50 per car—Gugenheim-Goldsmith Co. 113 I. C. C. 461.

Thereupon there was offered and received in evidence, Complainant's Exhibit No. 67, which is in the following form:

(Here follows Complainant's Exhibit No. 67, marked side folio pages 422, 423, 424, 425, 426, and 427)

[fol. 428] The exhibit which is now offered as Exhibit No. 68 deals with rates on pineapples from Gulf ports to destinations in the Central Freight Association and Eastern Trunk Line territories. It is similar to the other exhibits heretofore introduced.

Thereupon, there was offered and received in evidence Complainant's Exhibit No. 68, which is in the following form:

(Here follows Complainant's Exhibit No. 68, marked side folio pages 429 and 430)

[fol. 431] I now offer Complainant's Exhibit No. 69. This exhibit deals with rates on coconuts from Gulf ports to destinations in Central Freight Association and Eastern Trunk Line territory. Coconuts are highly perishable. They move in refrigerator cars, are imported through the same ports as bananas, and are moved in the same class of equipment, the same trains and in many instances move in mixed carloads with bananas.

Coconuts move from Gulf ports to the interior about nine months of the year. The values range from $25.00 to $55.00 per 1,000 coconuts; a thousand nuts range from 1400 to 1500 pounds. Computed in terms of tons, the value of coconuts ranges from $35.71 to $73.31 per ton at the Gulf ports.

Coconuts are stored in cold storage warehouses in large centers. They can be stored over a period of ninety days, but not in excess of that period. They have to be protected against the heat and the cold. They are commonly loaded in refrigerator cars.

Thereupon there was offered and received in evidence Complainant's Exhibit No. 69, which is in the following form:

(Here follows Complainant's Exhibit No. 69, marked side folio pages 432 and 433)

[fol. 434] I now offer Complainant's Exhibit 70, which deals with rates on coconuts from Gulf ports to Western Trunk Line destinations. Everything which I have said with respect to the rate on coconuts in connection with Exhibit No. 69 applies with equal force to Exhibit No. 70.

Thereupon there was offered and received in evidence, Complainant's Exhibit No. 70, which is in the following form:

(Here follows Complainant's Exhibit No. 70, marked side folio pages 435 and 436)

[fol. 437] I now present Complainant's Exhibit No. 71, which is a summary of the rates on all tropical fruits shown in Exhibits Nos. 62 to 70, inclusive.

I want to call particular attention to the fact that the grand average of all of the tropical fruit is less than the gross ton mile earnings yielded by the rate of $1.73 per hundred pounds, on the basis of the rate on tropical fruit without deductions or terminal allowance at Gulf ports. After making allowance for terminal deduction at Gulf ports, the rates yield the carriers 3.82 mills per gross ton mile, which is slightly higher than the earnings of 3.71 mills under the rate of $1.44 requested by complainant.

The average haul under rates on the several tropical fruits noted is less than the average haul on the California deciduous fruits. Following the accepted theory of rate-making, that as the distance increases the ton mile earnings should decrease, these gross ton mile earnings shown for all tropical fruits might well be somewhat less.

In my opinion this is a very fair presentation of the rate adjustment on tropical fruits in this country. No short hauls under five hundred miles are included, because I do not think they are of any value to the Commission in a case of this kind involving a haul of three thousand miles

[fol. 432]

EXHIBIT No. 69

Complainant's Witness Ackerman

"California Growers' and Shippers' Protective

I. C. C. Docket 19130

Comparison of Rates and Charges Assessed for Transportation of Deciduous Fruits from California Produc
Assessed for Transportation in Other Territories, of Commodities of Simila

Commodity	From	To	Routing	Distance	Rates
			Rates Charged		
Deciduous Fruits	California Origins	Eastern Destinations	A	A-2909	$1.73
			Rates Requested		
Deciduous Fruits	California Origins	Eastern Destinations	A	A-2909	1.44
			Compared Rates and Charges		
Coconuts	New Orleans, La.	Chicago, Ill.	IC (*)	920	.525
		Cincinnati, Ohio	L&N	849	.47
		Cleveland, "	L&N-Big 4	1111	.72
		Detroit, Mich.	L&N-PRR-DTSL	1194	.72
	Mobile, Ala.	Grand Rapids, "	L&N-Big 4-NYC	1108	.795
	Pensacola, Fla.	Bay City, "	L&N-Big 4-MC	1208	.795
	Port Chalmette, La.	Toronto, Ont.	L&N-Big 4-NYC-MO... THB&CP	1410	.795
		Pittsburg, Pa.	Sou. Wash.-PRR	X 1160	.72
		Buffalo, N. Y.	L&N-Big 4-NYC	1294	.72
		Syracuse, N. Y.	SOU-PRR-NY-NYC	1413	.845
Totals				11667	7.105
Average				1166.7	.71

[fol. 433] (*) From Mobile via M&O Cairo, I.C. from Pensacola, via L&N, Mobile M&O Cairo, I.C. from Port C
(X) From Pensacola Via L&N-WRA-Sou, thence same routing as shown. Above distances are the average sho
(1) Minimum Terminal expense absorbed at New Orleans $18.50 per car—Gugenheim-Goldsmith Co., 113 I. C.

[fol. 432]

EXHIBIT No. 69

Complainant's Witness Ackerman

"California Growers' and Shippers' Protective League

I. C. C. Docket 19130

Comparison of Rates and Charges Assessed for Transportation of Deciduous Fruits from California Producing Territory to Eastern Destinations with Rates and Charges Assessed for Transportation in Other Territories, of Commodities of Similar Transportation Characteristics

Commodity	From	To	Routing	Distance	Rates	Weights	Car earnings Gross	Car earnings (1) After absorbing minimum terminal charges at New Orleans	Car-mile earnings Gross	Car-mile earnings (1) After absorbing minimum terminal charges at New Orleans	Tariff Citation
			Rates Charged								
Deciduous Fruits	California Origins	Eastern Destinations	A	A-2909	$1.73	B-30000 / M-26000	$519.00	$519.00	17.8	17.8	(1)
			Rates Requested								
Deciduous Fruits	California Origins	Eastern Destinations	A	A-2909	1.44	B-30000	432.00	432.00	14.8	14.8	.....
			Compared Rates and Charges								
Coconuts	New Orleans, La.	Chicago, Ill.	IC (*)	920	.525	O-23500 M-20000	123.38	104.88	13.4	11.4	(4)
	Mobile, Ala.	Cincinnati, Ohio	L&N	849	.47		110.45	91.95	13.0	10.8	
	Pensacola, Fla.	Cleveland, "	L&N-Big 4	1111	.72		169.20	150.70	15.2	13.5	
	Port Chalmette, La.	Detroit, Mich.	L&N-PRR-DTSL	1194	.72		169.20	150.70	14.1	12.6	
		Grand Rapids, "	L&N-Big 4-NYC	1108	.795		186.83	168.33	16.8	15.1	
		Bay City, "	L&N-Big 4-MC	1208	.795		186.83	168.33	15.4	13.9	
		Toronto, Ont.	L&N-Big 4-NYC-MO-THB&CP	1410	.795		186.83	168.33	13.2	11.9	
		Pittsburg, Pa.	Sou. Wash.-PRR	X 1160	.72		169.20	150.70	14.5	12.9	
		Buffalo, N. Y.	L&N-Big 4-NYC	1294	.72		169.20	150.70	13.0	11.6	
		Syracuse, N. Y.	SOU-PRR-NY-NYC	1413	.845		198.58	180.08	14.0	12.7	
Totals				11667	7.105	.....	1,669.70	1,484.70	.....	.....	
Average				1166.7	.71	.....	166.97	148.47	14.3	12.7	

[fol. 433] (*) From Mobile via M&O Cairo, I.C. from Pensacola, via L&N, Mobile M&O Cairo, I.C. from Port Chalmette via G.C.I. New Orleans, beyond same as shown above.
(X) From Pensacola Via L&N-WRA-Sou, thence same routing as shown. Above distances are the average short line distance from all points shown.
(1) Minimum Terminal expense absorbed at New Orleans $18.50 per car—Gugenheim-Goldsmith Co., 113 I. C. C. 461."

[fol. 435]

EXHIBIT No. 70

Complainant's Witness Ackerman

"California Growers' and Shippers' Protective League

I. C. C. Docket 19130

Comparison of Rates and Charges Assessed for Transportation of Deciduous Fruits from California Producing Territory to Eastern Destinations with Rates and Charges Assessed for Transportation in Other Territories of Commodities of Similar Transportation Characteristics

Commodity	From	To	Routing	Distance	Rates	Weights	Car earnings: Gross	Car earnings: (1) After absorbing terminal cost at New Orleans	Car-mile earnings: Gross	Car-mile earnings: (1) After absorbing terminal cost at New Orleans	Tariff Citation
			Rates Charged								
Deciduous Fruits	California Origins	Eastern Destinations	A	A 2909	$1.73	B-30000 M-26000	$519.00	$519.00	17.8	17.8	(1)
			Rates Requested								
Deciduous Fruits	California Origins	Eastern Destinations	A	2909	1.44	B-30000	$432.00	432.00	14.1	14.8	.....
			Compared Rates and Charges								
		Milwaukee, Wis.	IC-C&NW	1005	.56		131.60	113.06	13.0	11.2	
		Marinette, "	IC-C&NW	1169	.81		190.35	171.81	16.2	14.6	
		Madison, "	IC-C&NW	1006	.69		162.15	143.61	16.1	14.2	
		St. Paul, Minn.	IC-C&NW	1220	.81		190.35	171.81	14.4	13.0	
		Duluth, "	IC-C&NW	1390	.85		199.75	181.21	14.3	13.0	
		Menominee, Mich.	IC-C&NW	1170	.81		190.35	171.81	16.2	14.6	
		Escanaba, "	IC-C&NW	1235	.85		199.75	181.21	16.1	14.6	
		Marquette, "	IC-C&NW	1323	.90		211.50	192.96	15.9	14.5	
		Ishpeming, "	IC-C&NW	1300	.90		211.50	192.96	16.2	14.8	
	New Orleans, La.	Iron Mountain, Mich.	IC-C&NW	1255	.85		199.75	181.21	15.9	14.4	
Coconuts	Mobile, Ala. X	Aberdeen, S. D.	IC-C&NW	56	1.11		260.85	242.31	15.7	14.6	
[fol. 436]	Pensacola, Fla. X	Sioux Falls, S. D.	IC-CM&StP	1475	.835	O-23500	196.23	177.69	13.3	12.0	(4)
	Port Chalmette, La. X	Yankton, S. D.	IC-CM&StP	1495	1.025	M-22000	240.88	222.34	16.1	14.8	
		Kansas City, Mo.	IC-Frisco	878	.76		178.60	160.06	20.3	18.2	
		Omaha, Nebr.	IC-MP	1077	.81		190.35	171.81	17.6	15.9	
		Fremont, Nebr.	IC-MP-C&NW	1114	.78		183.30	164.76	16.4	14.7	
		Dubuque, Ia.	IC	1013	.63		148.05	129.51	14.6	12.7	
		Cedar Rapids, Ia.	IC	1112	.76		178.60	160.06	16.0	14.3	
		Des Moines, Ia.	IC-MP-Wab.	1153	.76		178.60	160.06	15.4	13.8	
		Mason City, Ia.	IC-MP-Wab.-CRI&P	1273	.81		190.35	171.81	14.9	13.4	
		Council Bluffs, Ia.	IC-MP	1082	.81		190.35	171.81	17.5	15.8	
		Sioux City, "	IC-MP-C&NW	1179	.81		190.35	171.81	16.1	14.5	
		St. Louis, Mo.	IC-MP	813	.42		98.70	80.16	12.1	9.8	
Totals				27503	18.35	.....	4312.26	3885.84	.....	.....	
Averages				1195.7	79.7	.....	187.48	168.94	15.6	14.1	

(1) Minimum absorption $18.54 per car, based upon average absorption of 20.79 per car found by the Commission in Dawson Product Co. V. A. & V. Ry. Co., 101 I. C. C. 197, less $2.25 per car, which the Illinois Central R. R. is not compelled to absorb on traffic which is received from docks reached by its own rails.

(X) Routing from Mobile via M&O R.R. Cairo, I.C. from Pensacola, via L&N R.R., Mobile, M&O R.R., Cairo, I.C. R.R. from Port Chalmette via G.C.L. New Orleans, I.C. beyond same as shown above."

[fol. 438]

EXHIBIT No. 17

Complainant's Witness Ackerman

California Growers' and Shippers' Protective League

I. C. C. Docket 19130

Summary Showing Average Level of Rates Assessed for Transportation of Tropical Fruits, Carloads from Gulf Ports and Jacksonville, Fla., to Destinations in Central Freight Association, Eastern Trunk Line, Western Trunk Line, and Transcontinental Territories Compared with Weighted Average Rates and Charges Assessed for Transporting Deciduous Fruits from California Producing Territory to Eastern Destination

Commodity	From	To	Number of rates	Total miles	Total rates	Gross	Total car charges after absorbing terminal charge at New Orleans	Average car-mile earnings after absorption at New Orleans: Gross	Average car-mile earnings after absorption at New Orleans	Average gross ton-mile earnings after absorptions at New Orleans: Gross	Average gross ton-mile earnings after absorptions at New Orleans
Bananas	Gulf Ports	Transcontinental Territory	129	382,467	$241.875	$48,834.24	$46,442.58				
		E.T.L. and C.F.A.	18	20,241	15.93	3,393.09	3,080.84				
		W. T. L.	24	29,196	25.925	5,234.22	4,789.10				
Coconuts	Gulf Ports	W. T. L. Territory	23	27,503	18.35	4,312.26	3,885.84				
		E. T. L. & C. F. A. Territory	10	11,667	7.105	1,669.70	1,484.70				
Pineapples	Jacksonville, Fla.	E. T. L. & C. F. A. Territory	11	12,958	9.12	2,188.80	1,985.30				
		Transcontinental Territory	82	240,970	163.98	39,355.20	37,834.92				
		Transcontinental Territory	42	139,680	83.89	20,164.80					
Totals			339	864,682	$566.175	125,152.31	99,503.28				
Average				2,550	1.67	369.18	335.02	14.4c	13.7c	4.01 Mills	3.82 Mills
					FROM CALIFORNIA						
					Rates Charged						
Deciduous Fruits	Calif. Origins	Eastern Destinations		A2909	$1.73	$529.00		17.8c	17.8c	4.46	4.46
					Rates Requested						
Deciduous Fruits	Calif. Origins	Eastern Destinations		A2909	1.44	432.00		14.8c	14.8c	3.71 Mills	3.71 Mills

Average of 297 Rates. Average loading from Gulf Ports 24,818 lbs. From all points of origin 22,088.

across the continent. I have endeavored in my rate compilations to take rates to distances of seven hundred or eight hundred miles or greater.

Thereupon there was offered and received in evidence Complainant's Exhibit No. 71, which is in the following form:

(Here follows Complainant's Exhibit No. 71, marked side folio page 438)

[fol. 439] Complainant's Exhibit No. 72, which I now offer, contains excerpts from the Interstate Commerce Commission's language dealing with rates on bananas and coconuts from Gulf ports. These are in essence the Commission's findings of fact in cases involving banana rates and banana service.

Thereupon, there was offered and received in evidence, Complainant's Exhibit No. 72, which is in the following form:

[fol. 440] EXHIBIT No. 72

Complainant's Witness Ackerman

Excerps from Interstate Commerce Commission Reports

Circumstances and Conditions Surrounding Transportation of Carload Shipments of Bananas

Dawson Produce Co. v. A. & V. Ry. Co. 101 I. C. C., 197:

197. "The movement of bananas is steady and continuous throughout the year. Coconuts move mostly during Thanksgiving and Christmas Season, and generally in small quantities, in mixed carloads with bananas. Bananas are shipped in ventilated Refrigerators cars and, except in the summer months do not require icing.

201. "Defendants contend 'These cars are devoted almost exclusively to the traffic so that shipments may be taken care of properly at the port of New Orleans, and in most instances the cars are returned empty.' "

201. "The average terminal expense per car absorbed by Texas and Pacific on 2,648 cars handled out of New Orleans during last six months of 1922 was shown as $20.79."

201. "The average weights per car of Bananas on the Texas and Pacific during 1922 was 20,190 pounds."

202. "Attention is also called to the practice of stopping cars to partly unload and expedited delivery service is rendered at destinations." • • •

"During the month of April 1922, 19 banana trains, averaging slightly over 16 cars each moved out of New Orleans over the Texas and Pacific."

205. "The former (banana) traffic demanded a special service in point of train speed."

"To all other points in Texas 2,774 cars moved, the average weight of which was 20,267 pounds."

"41 Cars to Dallas, 2 to Sherman and 1 to Stamford average 20,487 lbs."

Bananas from Gulf Ports, 109, I. C. C. 211:

213. "The average loading of bananas on the Louisville and Nashville for the year 1924, was 21,300 lbs.

The evidence with respect to the value of bananas is conflicting. On behalf of respondents it was testified that the value at New Orleans would vary from $1,462.50 to $2,520 per car depending on the size of the bunches. On behalf of protestants, it was testified that the value was from $2.50 to $3.00 per 100 pounds. A telegram received by respondents from New Orleans and referred to on the record, quoted the price as from $3.80 to $4.20 per 100 pounds at that point."

[fol. 441] 213. "In 1924, over 47,000,000 bunches of bananas were imported into the United States. It is stated that the car loading ranges from 325 to 700 bunches, depending upon the size thereof. Using an average of 500 bunches per car, the total importations were nearly 95,000 carloads. New Orleans lead with 19,000,000 bunches, New York was second with 15,000,000, Philadelphia, Pa. third with nearly 5,000,000. Another 5,000,000 were approxi-

mately equally divided between Maryland and Mississippi ports and Mobile was sixth with 2,200,000 bunches. About 625,000 came in through Galveston, Texas, and no other port received as much as 100,000 bunches.

Gugenheim-Goldsmith Co. v. GH&SA Ry. Co. 113-461, Bananas and Bananas and Coconuts in Mixed Carloads.

460. "In order to Handle the traffic properly, the Southern Pacific keeps available in its New Orleans terminals at all times from 100 to 125 or more refrigerator cars of the Pacific Fruit Express Company, which are used in place of carrier-owner equipment. The carriers generally move the traffic in special trains when offered in quantities of 10 carloads or more. During 1923, the number of special trains operated by Southern Pacific lines was 177 containing #3949 carloads. Bananas are unloaded from vessels at two points in New Orleans, neither of which is reached by Southern Pacific lines. The latter absorb from one unloading point switching charges of the Illinois Central of $2.25 per car and from the other point charges of the New Orleans Public Belt Railway of $6.30 per car. In addition charges for loading, slatting, wharfage, and sheddage are absorbed, which makes the total absorption from $18.50 to $20.00 per car."

"Southern Pacific tariff provide for free return transportation of attendants who accompany banana trains to maintain uniformity of temperature and proper ventilation in the cars. There is no evidence that attendants are necessary in connection with shipments to Texas points, but in some instances, San Antonio shipments are cared for by attendants when they are in trains destined to California.

Averaging 27.39 cars per train.

[fol. 442] I now present Complainant's Exhibit No. 73, which deals with rates on green vegetables from New Mexico, the Pecos Valley District, and from the Brownsville or lower Rio Grande Valley of Texas. Texas reaches the

market with the earliest green vegetables produced in the United States, and commands better prices for green vegetables than do other growers of that product. These vegetables move in refrigerator cars in the same manner as does deciduous fruit, and require the same expedited service. In addition to that, green vegetables are shipped in crates which contain ice. Shippers also engage in the practice of top icing, placing ice on top of the packages. The result is that the floors and sides and insulation of the cars are kept continuously wet. This has an injurious effect upon the car.

New Mexico produced 322 cars of this traffic during the year 1925. Texas produced 19,326 cars during the same period.

The New Mexico peas, quoted on the Chicago wholesale market ranged from $4.00 to $4.50 per 45 pound crate which, computed in dollars and cents per ton, after deducting the freight charge to Chicago, was from $162.60 to $186.00 per ton. Green peas are a very light commodity. A crate of pease weighs very little.

Beans in 36 pound hampers ranged from $4.00 to $6.00 per hamper, which, after allowing for freight charges, amounts to from $208.20 to $319.32 per ton.

Texas beets ranged from $1.25 to $1.75 per 49 pound basket or, after allowing for freight charges, from $30.62 to $51.02 per ton.

Endive ranged from $1.00 to $2.00 per 25 pound bushel [fol. 443] basket, or from $59.60 to $139.60 per ton.

Parsley from Texas in 20 pound bushel baskets sells at about ten cents per pound, or $154.60 to $179.60 per ton.

Spinach in 26 pound baskets sells from $1.00 to $1.35, or from $49.32 to $82.45 per ton.

Texas turnips sell from $2.75 to $3.50 per 66 pound crate, or from $62.92 to $85.60 per ton.

Texas cucumbers in 52 pound bushel baskets sell from $5.00 to $5.25 per bushel, which amounts to from $168.26 to $177.90 per ton.

Texas sweet corn in 53 pound bushel baskets ranges from $2.15 to $2.25 per basket, or from $60.72 to $69.40 per ton.

Texas tomatoes range from $2.00 to $2.50 per 49 pound crate, or from $102.05 to $122.44 per ton.

[fol. 445]

EXHIBIT No. 7

Complainant's Witness

California Growers' and Shippers'

I. C. C. Docket 19

Comparison of Rates and Charges Assessed for Transportation of Deciduous Fruits from Cal
Assessed for Transportation in Other Territories of Commod

Commodities	From	To	Distance	Route	
Deciduous Fruits.....	California Origins....	Eastern Destinations..	A 2909	Rates Charged A	
Deciduous Fruits.....	California Origins....	Eastern Destinations..	A 2909	Rates Requested A	
				Compared Rates and C	

FOLD OUT IS TOO LARGE TO BE FILMED

These destinations are representative of Western Trunk Line destinations, and this traffic moves to all of these destinations.

I think that you can fairly resort to these rates on vegetables for assistance in arriving at the proper measure of the rate on California deciduous fruits, taking into consideration the nature of the traffic, inherent liability of the traffic to damage, value, length of haul and the manner in which they are loaded in the car.

The average mileage under these rates on vegetables is 1524.03 miles, which is a little more than half the average distance which California deciduous fruit is hauled. Yet, the earnings per gross ton mile are very little above the earnings per gross ton mile which would be yielded by our proposed rate of $1.44 per hundred pounds. If the haul were extended from 1524 to 2909 miles, the rate should, by any fair rate of progression which could be used, be so [fol. 444] adjusted that the gross ton mile earnings would be lower than those shown here.

Thereupon there was offered and received in evidence Complainant's Exhibit No. 73, which is in the following form:

(Here follows Complainant's Exhibit No. 73, marked side folio pages 445, 446, and 447)

[fol. 448] I now present Complainant's Exhibit No. 74. On page 1 are shown rates on cantaloupes from Las Cruces and Belen, New Mexico, to destinations in Central Freight Association and Eastern Trunk Line territory. The distance is 2164 miles and the average gross ton mile earnings are 3.97 mills, which is less than the gross ton mile earnings yielded under the present rate of $1.73 from California for a distance of 2909 miles.

On page 2 are shown rates from Mercedes and Barstow, Texas, to destinations in Western Trunk Line territory.

On page 3 are shown rates from Barstow, Texas, on cantaloupes to Eastern Trunk Line and Central Freight Association territory. The ton mile earnings are somewhat greater than those under the rate of $1.44 requested in this case, but they are less than those under the $1.73 rate now in effect. Under a fair rate of progression, if California

were to enjoy the same general level of rates that applies from points of origin shown on Exhibit No. 74 and taking into consideration the greater distance from California, California should have a lower rate than that shown on the exhibit.

I know of no deciduous fruit movement in the United States which is comparable with the deciduous fruit movement from California. There is deciduous fruit produced in other parts of the United States and shipped in considerable quantities, but there is nothing equal to the solid train movement that the shippers offer the carriers from California.

Thereupon there was offered and received in evidence Complainant's Exhibit No. 74, which is in the following form:

(Here follows Complainant's Exhibit No. 74, marked side folio pages 449, 450, and 451)

[fol. 452] Cantaloupes are a commodity which moves under conditions similar to those surrounding the movement of deciduous fruit, except that cantaloupes are not offered in solid train movements. The latter requires expedited service and movement in refrigerator cars and the value is somewhat comparable in normal times with the value of deciduous fruits. In many instances carriers have the same rates on cantaloupes and deciduous fruits.

Under normal conditions it is not proper to make an analysis which involves direct comparison of earnings per gross ton mile yielded by rates for shorter and longer hauls, respectively, unless some allowance is made for decreasing ton mile earnings as distance increases, showing the recognized principle of the Interstate Commerce Commission and the carriers.

To illustrate this principle I offer Exhibit No. 75. This shows a distance scale of commodity rates established by the Interstate Commerce Commission for the movement of cottonseed products from, roughly speaking, Western Trunk Line and Mississippi Valley territory to Pacific Coast destinations. In that case the Commission prescribed a scale for a distance of 2600 miles for application in territory east of the Intermountain territory. For the terri-

[fol. 449]

EXHIBIT No. 74

Complainant's Witness Ackerman

California Growers' and Shippers' Protective League

I. C. C. Docket 19130

Comparison of Rates and Charges Assessed for Transportation of Deciduous Fruits from California Producing Territory to Eastern Destinations, with Rates and Charges Assessed for Transportation in Other Territories of Commodities of Similar Transportation Characteristics.

Commodity	From	To	Distance	Rates	Weights	Car earnings	Car-mile earnings in cents	Gross ton-mile earnings in mills
		Rates Charged						
Deciduous fruits	California: Origins	Eastern Destns	A 2909	$1.73	B 30000 M26000	$519.00	17.8c	4.46
		Rates Requested						
Deciduous fruits	California: Origins	Eastern Destns	A 2909	$1.44	B30000	432.00	14.8	3.71
		Compared Rates and Charges						
Cantaloupes	X Las Cruces, N. M. X Belen, N. M.	Albany, N. Y	2268	1.475	P22500 M20000	331.88	14.5	4.03
		Baltimore, Md	2323	1.455		327.38	14.	3.88
		Boston, Mass	2463	1.565		352.13	14.2	3.64
		Montreal, Que	2280	1.50		337.50	14.8	4.08
		New York, N. Y	2368	1.50		337.50	14.2	3.93
		Norfolk, Va	2408	1.455		327.38	13.5	3.74
		Philadelphia, Pa	2276	1.465		329.63	14.4	3.99
		Quebec, Que	2456	1.635		367.88	14.9	4.13
		Syracuse, N. Y	2112	1.38		310.50	14.7	4.05
		Akron, Ohio	1812	1.20		270.00	14.9	4.11
		Toledo, Ohio	1703	1.185		266.63	15.6	4.31
		Detroit, Mich	1731	1.18		265.50	15.3	4.23
		Pittsburgh, Pa	2127	1.20		270.00	12.6	3.50
		Buffalo, N. Y	1972	1.20		270.00	13.6	3.77
		Totals	30299	19.395	....	4,363.91	....	....
		Average	2164	1.385	....	311.70	14.4	3.97

X Distance computed by using distance to Chicago from both origin points, plus shortest workable distance beyond.

[fol. 450]

Cantaloupes	Barstow, Tex	Albany, N. Y	2305,	$1.585	P22500 M20000	$356.62	15.4	4.26
		Baltimore, Md	2360	1.47		330.75	14.0	3.86
		Boston, Mass	2500	1.675		376.88	15.	4.15
		Montreal, Que	2317	1.62		364.50	15.7	4.33
		New York City, N. Y	2405	1.62		364.50	15.1	4.18
		Norfolk, Va	2445	1.57		353.25	14.4	3.98
		Philadelphia, Pa	2303	1.585		356.62	15.4	4.27
		Quebec, Que	2493	1.74		391.50	15.7	4.33
		Syracuse, N. Y	2149	1.495		336.38	15.6	4.31
		Akron, Ohio	1849	1.225		275.63	14.9	4.11
		Toledo, Ohio	1740	1.20		270.00	15.5	4.22
		Detroit, Mich	1768	1.21		272.25	15.3	4.24
		Pittsburgh, Pa	2160	1.29		290.25	13.4	3.70
		Buffalo, N. Y	2009	1.29		290.25	14.4	3.98
		Totals	30803	20.575		4,639.39	....	....
		Averages	2200.2	1.569		331.38	15.0	4.15

Distance computed via T&P,-MP-C&A to Chicago, beyond as shown.

[fol. 451]

Cantaloupes	Mercedes, Texas	Chicago, Ill	1613	$1.02	P-22500 M-20000	$229.50	14.2	3.92
		St. Louis, Mo	1328	.91		204.75	15.4	4.25
		Minneapolis, Minn	1986	1.09		245.25	12.3	3.40
		Kansas City, Mo	1504	.91		204.75	13.6	3.75
		Milwaukee, Wis	1698	1.02		229.50	13.5	3.72
		Omaha, Nebr	1703	.97		218.25	12.7	3.53
		Totals	9832	5.92		1332.00	13.5	3.72
		Averages	1638.6	98.6		222.00	....	....
Cantaloupes	Barstow, Texas	Chicago, Ill	1422	$.99	P-22500 M-20000	$222.75	15.6	4.32
		Milwaukee, Wis	1506	.99		222.75	14.7	4.07
		Minneapolis, Minn	1795	1.06		238.50	13.2	3.66
		Kansas City, Mo	1312	.88		198.00	15.0	4.16
		Omaha, Nebr	1511	.94		211.50	13.9	3.85
		Sioux Falls, S. D	1704	1.06		238.50	13.9	3.86
		Totals	9250	5.92		1332.00	14.4	3.97
		Averages	1541.6	98.6		222.00	....	....

tory starting with Cheyenne, Wyoming and El Paso, Texas, the Commission prescribed an arbitrary to cover hauls through the Intermountain territory into the Pacific Coast territory. We have computed the ton mile earnings under that scale to determine what ratio ton mile earnings for three thousand miles bore to the ton mile earnings for shorter distances, starting with five hundred miles.

On the second sheet of this exhibit it is shown that the Commission's scale extended 2600 miles. From that dis-
[fol. 453] tance I have extended the scale at the rate of one cent per 100 miles. That is the same rate of progression which the Commission used for the distance 1600 to 2600 miles.

In the following exhibits I have not used the rate itself, but merely the percentage rate of progression. For example, if the Commission had fixed a rate of sixty cents on cottonseed products for 1500 miles and a rate of ninety cents on cottonseed products for 3000 miles, which is but 50% in excess of the rate for the shorter distance, although the mileage has increased 100%, I used approximately that same ratio in projecting my scale of fruit and vegetable rates. I did that by then reducing it to earnings per gross ton mile.

I used the square root of the distance because the Commission has observed that rates in this country progress proportionately to the square root of the distance rather than to the distance itself.

Thereupon there was offered and received in evidence Complainant's Exhibit No. 75, which is in the following form:

[fol. 454] COMPLAINANTS' EXHIBIT No. 75

Complainants' Witness Ackerman

California Growers' and Shippers Protective League

I. C. C. Docket 19130

Statement Showing Rate of Progression of Distance Scale Prescribed by the Interstate Commerce Commission in Oklahoma Corporation Commission A. & S. Ry. Co. 98 I. C. C., 185-265, for Movement of Cottonseed and Related Vegetable Cakes and Meals from Oklahoma, Texas, Arkansas, Western Louisiana, Kenneth, and Malden, Mo., Mississippi River Crossings. East St. Louis and South and Lovington, N. Mex.

To All Points in Illinois, Missouri, Group B Territory, Kansas, Eastern Colorado, and Western Trunk Line Territory

Distance	Square root of distance	Rate in cents	Ton-mile earnings, in mills	Ratio of ton-mile earnings for 3,000 miles to ton-mile earnings shorter distance shown
500	22.35	34	13.6	33.8
550	23.45	35	12.7	36.2
600	24.49	36	12.0	38.3
650	25.48	37	11.3	40.7
700	26.21	38	10.8	42.5
750	27.21	39	10.4	44.2
800	28.13	40	10.0	46.0
850	29.14	41	9.6	47.9
900	30.00	42	9.3	49.4
950	30.72	43	9.0	51.1
1000	31.33	44	8.8	52.2
1050	32.40	45	8.5	54.1
1100	33.16	46	8.3	55.4
1150	33.91	47	8.1	56.7
1200	34.64	48	8.0	57.5

To Pacific Coast and Intermountain Territory West of line drawn from North to South along the western boundaries of North Dakota, South Dakota, and Nebraska to Cheyenne, Wyo., thence South over the line of Colorado and Southern through Boulder and Denver to Trinidad, Colo., thence South over the line of the Santa Fe to Colfax, N. Mex., and the El Paso & Southwestern to El Paso, Texas.

Distance in miles	Rate in cents	Ton-mile earnings, in mills	Ratio of ton-mile earnings for 3,000 miles to ton-mile earnings shorter distance shown
500	34	13.6	39.7
550	35	12.7	42.5
600	36	12.0	45.0
650	37	11.3	47.7
700	38	10.8	50.0
750	39	10.4	51.4
800	40	10.0	54.0
850	41	9.6	56.2
900	42	9.3	58.0
950	43	9.0	60.0
1000	44	8.8	61.3
1050	45	8.5	63.5
1100	46	8.3	65.0
1150	47	8.1	66.5
1200	48	8.0	67.5

[fol. 455] To East of Intermountain Territory

Distance	Square root of distance	Rate in cents	Ton-mile earnings, in mills	Ratio of ton-mile earnings for 3,000 miles to ton-mile earnings shorter distance shown
1250	35.35	50	8.0	57.5
1300	36.05	50	7.6	60.5
1350	36.74	52	7.7	59.7
1400	37.41	52	7.4	62.1
1450	38.07	54	7.4	62.1
1500	38.72	54	7.2	63.8
1600	40.00	56	7.0	65.7
1700	41.23	57	6.7	68.6
1800	42.42	58	6.4	71.8
1900	43.58	59	6.2	74.1
2000	44.74	60	6.0	76.6
2100	45.74	61	5.8	79.3
2200	46.90	62	5.6	82.1
3300	47.95	63	5.4	85.1
2400	48.98	64	5.3	86.7
2500	50.00	65	5.2	88.4
2600	50.99	66	5.0	92.0
2700	51.96	67	4.9	93.8
2800	52.87	68	4.8	95.8
2900	53.85	69	4.7	97.8
3000	54.77	70	4.6	100.0

Differentials for hauls through Intermountain and Pacific Coast Territories

Rate	Per cent above standard scale
.....	....
.....	....
.....	....
.....	....
.....	....
.....	....
.....	....
1.5	2.6
3.0	5.1
5.0	8.4
6.0	11.0
7.0	11.4
8.0	12.9
8.5	13.4
9.0	14.0
9.5	14.6
10.0	15.1
10.5	15.6
11.0	16.1
11.5	16.6
12.0	17.1

To Intermountain and Pacific Coast Territory

Distance, in miles	Rate, in cents	Ton-mile earnings, in mills	Ratio of ton-mile earnings for 3,000 miles to ton-mile earnings shorter distance shown
1250	50.0	8.0	67.5
1300	50.0	7.6	71.0
1350	52.0	7.7	70.1
1400	52.0	7.4	72.9
1450	54.0	7.4	72.9
1500	54.0	7.2	75.0
1600	56.0	7.0	77.1
1700	58.5	6.8	79.4
1800	61.0	6.7	80.5
1900	64.0	6.7	80.5
2000	66.0	6.6	81.8
2100	68.0	6.4	84.3
2200	70.0	6.3	85.7
2300	71.5	6.2	87.0
2400	73.0	6.1	88.5
2500	74.5	5.9	91.5
2600	76.0	5.8	93.1
2700	77.5	5.7	94.6
2800	79.0	5.6	96.4
2900	80.5	5.5	98.1
3000	82.0	5.4	100.0

Commission's scale extends to 2600 miles. Beyond 2600 miles scale has been extended at rate of 1 cent per hundred miles or at the same rate of progression as the original scale for 1600 to 2600 miles.

The differentials for hauls through Intermountain and Pacific Coast Territory are added to the standard scale at and beyond 1600 miles, reflecting maximum hauls of 1267 miles from Cheyenne, Wyo., and 1287 miles from El Paso, Texas to San Francisco, California.

[fol. 456] Exhibit No. 76 deals with rates on fresh vegetables from New Orleans to representative destinations in Western Trunk Line, Central Freight Association and Eastern Trunk Line territory. Louisiana shipped in 1925, 4388 cars of mixed vegetables. In some instances the rates on vegetables are about the same as the rates on pears and in some instances the rates on vegetables are higher than the rates on pears. This shows, I believe, that the carriers concede that deciduous fruits and vegetables of this kind are practically the same from a transportation standpoint and should have approximately the same rates.

Thereupon there was offered and received in evidence Complainant's Exhibit No. 76, which is in the following form:

(Here follows Complainant's Exhibit No. 76, marked side folio pages 457 and 458)

[fol. 459] Complainant's Exhibit No. 77, which I now present, deals with the same rates and distances as shown in Exhibit No. 76. I have projected these rates to distances that the traffic moves from California to Eastern destinations, namely 2,909 miles, by using the Commission's rate of progression in the cottonseed case which I have dealt with in Exhibit No. 75.

I have used the rate of progression in connection with the gross ton mile earnings, as I believe the gross ton mile earnings are fairer than net ton mile earnings, taking into consideration the fact that the California traffic loads much in excess of any deciduous fruit and vegetable traffic shipped from any other point in the United States. Had I used net ton mile earnings, the result would have been less favorable to the carriers.

This exhibit shows that the average distance for which the rates apply is but 1119.5 miles, or a little more than one-third the average of California fruit. It would not have been proper to state the earnings per gross ton mile yielded by those rates for that average distance and employ them as a guide in constructing rates for a haul of nearly 3,000 miles, unless you resort to this plan to diminish the earnings per net ton mile or per gross ton mile as the distance increases.

[fol. 457]

EXHIBIT No. 76

Complainant's Witness Ackerman

California Growers' and Shippers' Protective League

I. C. C. Docket 19130

Comparison of Rates and Charges Assessed for Transportation of Dedicuous Fruits from California Producing Territory to Eastern Destinations with Rates and Charges Assessed for Transportation in Other Territories of Commodities of Similar Transportation Characteristics

Commodity	From	To	Distance	Route	Rates	Weights	Car earnings	Car-mile earnings, cents	Gross ton-mile earnings, in mills	Tariff citation
			Rates Charged							
Deciduous fruits	California Origins	Eastern Destinations	A 2909	A	$1.73	B30000 M26000	$519.00	17.8c	4.46	(1)
			Rates Requested							
Deciduous fruits	California Origins	Eastern Destinations	A 2909	A	1.44	B30000	432.00	14.8	3.71	....
			Compared Rates and Charges							
Pears	New Orleans, La	St. Paul, Minn	K 1231	K	1.045	L21980	229.69	18.6	5.18	(7)
		Chicago, Ill	K 912	K	.90		197.82	21.6	5.98	
		Cincinnati, O	K 835	K	.79		173.64	20.7	5.77	
		Detroit, Mich	K 1106	K	.99		217.60	19.6	5.46	
		Buffalo, N. Y	K 1261	K	1.03		226.39	17.9	4.98	
		Pittsburgh, Pa	K 1148	K	1.02		224.20	19.5	5.41	
		New York, N. Y	K 1344	K	1.13		248.37	18.4	5.13	
		Totals	7837	....	6.905	....	1517.71	....	....	
		Average	1119.5	....	.986	....	216.81	19.3	5.38	
Beans, Cauliflower	New Orleans, La	St. Paul, Minn	K 1231	K	1.03	S23340	240.40	19.5	5.31	(7)
		Chicago, Ill	K 912	K	.87		203.06	22.2	6.07	
		Cincinnati, Ohio	K 835	K	.78		182.05	21.8	5.94	
		Detroit, Mich	K 1106	K	1.01		235.73	21.3	5.81	
		Buffalo, N. Y	K 1261	K	1.01		235.73	18.6	5.09	
		Pittsburgh, Pa	K 1148	K	1.10		256.74	22.3	6.08	
[fol. 458]		New York City, N. Y	K 1344	K	1.13		263.74	19.6	5.35	
		Totals	7837		6.93		1617.45	....	....	
		Average	1119.5		.99		231.06	20.6	5.62	
Tomatoes	New Orleans, La	St. Paul, Minn	K 1231	K	1.03	N22000	226.80	18.4	4.97	(7)
		Chicago, Ill	K 912	K	.87		191.40	20.9	5.67	
		Cincinnati, Ohio	K 835	K	.78		167.20	20.0	5.41	
		Detroit, Mich	K 1106	K	1.01		222.20	20.0	5.42	
		Buffalo, N. Y	K 1261	K	1.01		222.20	17.6	4.76	
		Pittsburgh, Pa	K 1148	K	1.10		242.00	21.0	5.69	
		New York, N. Y	K 1344	K	1.13		248.60	18.4	4.99	
		Totals	7837		6.93		1520.20	....	....	
		Average	1119.5		.99		217.17	19.3	5.24	
		Grand total	23511		20.765		4655.36	....	....	
		Grand Average	1119.5		.941		221.68	19.8	5.46	

[fol. 460] COMPLAINANT'S EXHIBIT No. 77

Statement Showing Comparative Level of Eastern and Transcontinental Deciduous Fruit Rates and Rates and Charges that Would Result from California Producing Territory to Eastern Destinations if Rates and Charges Applicable Between Eastern Points Were Projected to 2,909 Miles, Using Rate of Progression Prescribed by the Interstate Commerce Commission in Oklahoma Corporation Commission v. A. & S. Ry. Co., 98 I. C. C., 185-265

						Rates and car earnings that would result from California to the East, based on loading of 30,000 pounds, by projecting rates shown, using Commissions' rate of progression			
Commodity	From	To	Distance	Rates	Gross ton-mile earnings, mills	Rates	Car-mile earnings	Car earnings	Gross ton-mile earnings, mills
Pears	New Orleans, La.	Cincinnati, Ohio	835	.79	5.77	$1.2577	12.6c	$377.33	3.2427
		Chicago, Ill.	912	.90	5.98	1.3916	14.35	417.50	3.588
		Detroit, Mich.	1106	.99	5.46	1.4104	14.54	423.12	3.636
		Pittsburgh, Pa.	1148	1.02	5.41	1.3975	14.41	419.25	3.603
		Buffalo, N. Y.	1261	1.03	4.98	1.3038	13.44	391.14	3.3615
		St. Paul, Minn.	1231	1.045	5.18	1.3561	13.98	406.85	3.4965
		New York, N. Y.	1344	1.13	5.13	1.3948	14.38	418.44	3.5961
Average			1119.5	.986	5.38	1.3899	14.33	416.93	3.5830
Beans, Cauliflower	New Orleans	Cincinnati, Ohio	835	.78	5.94	1.2947	13.35	388.43	3.3382
		Chicago, Ill.	912	.87	6.07	1.4126	14.56	423.78	3.6420
		Detroit, Mich.	1106	1.01	5.81	1.5008	15.47	450.25	3.86946
		Pittsburgh, Pa.	1148	1.10	6.08	1.5705	16.19	471.17	4.04928
		Buffalo, N. Y.	1261	1.01	5.09	1.4017	14.45	420.51	3.6139
		St. Paul, Minn.	1231	1.03	5.31	1.3902	14.33	417.06	3.58425
		New York, N. Y.	1344	1.13	5.35	1.4546	15.00	436.39	3.75035
Average			1119.5	.99	5.62	1.4517	14.97	435.52	3.7429
Tomatoes	New Orleans, La.	Cincinnati, Ohio	835	.78	5.41	1.1792	12.16	353.78	3.04042
		Chicago, Ill.	912	.87	5.67	1.3195	13.60	395.86	3.402
		Detroit, Mich.	1106	1.01	5.42	1.4000	14.43	420.02	3.60972
		Pittsburgh, Pa.	1148	1.10	5.69	1.4698	15.15	440.95	3.78954
		Buffalo, N. Y.	1261	1.01	4.76	1.3108	13.51	393.25	3.3796
		St. Paul, Minn.	1231	1.03	4.97	1.3011	13.41	390.35	3.35475
		New York, N. Y.	1341	1.13	4.99	1.3567	13.99	407.03	3.49799
Average			1119.5	.99	5.24	1.3536	13.95	406.08	3.48984

The indicated earnings per gross ton mile yielded by the process which I have employed here for a haul of 2,909 miles are approximately upon a parity or on an average below the earnings per gross ton mile which would be yielded by the $1.44 rate which we propose.

Thereupon there was offered and received in evidence Complainant's Exhibit No. 77, which is in the following form:

(Here follows Complainant's Exhibit No. 77, marked side folio page 460)

[fol. 461] Exhibit No. 78 contains certain findings of fact made by the Commission in cases dealing with the movement of fresh vegetables from the South.

Thereupon there was offered and received in evidence Complainant's Exhibit No. 78, which is in the following form:

[fol. 462] EXHIBIT No. 78

Complainant's Witness Ackerman

California Growers' and Shippers' Protective League, I. C. C. Docket 19130

Excerpts from Interstate Commerce Commission's Decisions Dealing With Transportation Conditions Surrounding Vegetable Traffic

Mississippi R. R. Commission v. A. & R. R. R. Co., 98 I. C. C. 55:

"61. The average loading of tomatoes is about 22,000 pounds, of carrots 21,000 pounds, and of cabbage 24,000 pounds.

"The traffic is seasonable and because of the perishable nature of the commodities must be handled expeditiously. In advance of the period of heaviest movement over the Illinois Central, and adequate supply of cars is assembled by that carrier at terminals convenient to shipping points, there to be held until needed. The loaded movement is in

special trains on schedules much faster than those of ordinary freight trains. The maintenance of fast schedules requires that the tonnage be reduced substantially below that of the ordinary freight trains. * * * The annual maintenance costs are estimated at $250 per car for refrigerator cars and $203.82 per car for box cars. Much of the space in refrigerator cars is occupied by ice bunk[illegible] and insulation, and consequently these cars have less [illegible]ing space than box cars of the same size. Because of their smaller loading capacity refrigerator cars cannot be used economically in the transportation of general traffic and for this reason during certain times of the year many of these cars are idle."

"62. A substantial part of the total mileage of refrigerator cars used for the movement of this vegetable traffic is empty. It is shown that 47.7 per cent of the total mileage of 732 cars from Crystal Springs during the period from June 1 to June 18, 1923 was empty. The empty movement of refrigerator car for the entire Illinois Central System during April, May and June 1923 was 40 per cent of the total mileage. Loading platforms and sheds for vegetable traffic are provided by the Illinois Central at the principal shipping points in Mississippi, and are seldom used for other traffic."

Fruits and Vegetables, 43 I. C. C. 294

"300. Groups 1 and 2, which as stated, embrace the Southern portions of Louisiana, Mississippi, and Alabama and the western portion of Florida. These are the principal producing sections, the heaviest movements, consisting of cabbage, tomatoes, potatoes, beans, peas, carrots, beets, lettuce, and cucumbers, being from New Orleans and Mobile, and the Crystal Springs District."

[fol. 463] Thereupon there were offered and admitted in evidence, Complainant's Exhibits Nos. 79 to 98, inclusive. The odd numbered exhibits were similar in form to Complaint's Exhibit No. 76. They compared the earnings on the rates charged and the rates requested on deciduous fruits from California to eastern destinations with the

[fol. 464] STATEMENT SHOWING SUBSTANCE OF EXHIBITS 79 TO 98, INC.

Exhibit No.	No. of rates in Exhibit	Commodity	From	To	Distance (miles)	Average of all of the rates included in each exhibit: Rates (dollars)	Weights (pounds)	Car earnings (dollars)	Car-mile earnings (cents)	Gross Ton-mile earnings (mills)
				Rates Charged						
		Deciduous Fruits	California Origins	Eastern Destns	A2909	$1.73	B30,000 M26,000	$519.00	17.8	4.46
				Rates Requested						
		Dedicuous Fruits	California Origins	Eastern Destns	A2909	1.44	B30,000	432.00	14.8	3.71
				Compared Rates						
79	12	Deciduous Fruits	Barstow, Tex	W. T. L. Terr	1620.5	1.063	D24,000	255.17	15.7	4.25
80			Brownsville, Tex			(1) 1.3088		(1) 392.66	(1) 13.49	(1) 3.3745
81	4	Deciduous Fruits	Pecos Valley in New Mexico	W. T. L. Terr	1160.7	.9262	Q20,450	189.42	16.3	4.63
82						(1) 1.2121		(1) 363.65	(1) 12.50	(1) 3.12525
83	24	Deciduous Fruits	Highland, Ark	W. T. L. Terr. and Illinois Terr.	858.3	.9233	Q20,450	188.81	21.9	6.24
84						(1) 1.4037		(1) 421.13	(1) 14.47	(1) 3.6192
83		Concord Grapes	"	"	858.3	.9233	U22,200	204.97	23.8	6.61
84						(1) 1.4870		(1) 446.10	(1) 15.33	(1) 3.8338
85	23	Concord Grapes	Van Buren, Ark	W. T. L. and Illinois Terr.	805.6	.8704	U22,200	193.22	23.9	6.64
86						(1) 1.4474		(1) 434.22	(1) 14.92	(1) 3.73168
87	16	Peaches	Fort Valley, Ga	C. F. A. Terr	920	.98	Q20,450	200.41	21.7	5.68
88						(1) 1.3218		(1) 396.55	(1) 13.6	(1) 3.408
89	16	Peaches	Sterling, Ga	C. F. A. Terr	1080	1.0359	Q20,450	211.84	19.61	5.56
90						(1) 1.4017		(1) 420.55	(1) 14.45	(1) 3.614
91	12	Peaches	Chase, Ala	C. F. A. and W. T. L. Terr.	836.7	.8825	Q20,450	180.47	21.5	6.12
92						(1) 1.334		(1) 400.21	(1) 13.7	(1) 3 394
91	19	Peaches	Haleyville, Ala	C. F. A. and W. T. L. Terr.	765	.909	Q20,450	186.58	24.4	6.92
92						(1) 1.4493		(1) 434.81	(1) 14.94	(1) 3.7368
93	15	Cantaloupes	Fort Valley, Ga	C. F. A. Terr	920	.6743	M24,000	161.84	17.5	4.85
94		Honeydew Melons				(1) 1.1287		(1) 338.61	(1) 11.64	(1) 2.910
95	15	Cantaloupes	Sterling, Ga	C. F. A. Terr	1080	.7426	M24,000	178.24	15.4	4.41
96		Honeydew Melons				(1) 1.1118		(1) 333.35	(1) 11.46	(1) 2.8665
97	21	Pineapples	Gulf Ports	W. T. L. Terr	1159.1	.995	J24,000	238.80	20.6	5.56
98								(2) 220.26	(2) 19	(2) 5.13
						(1) 1.455		(1) 436.70	(1) 15.01	(1) 3.753
						(1)(2) 1.3431		(1)(2) 402.93	(1)(2)13.85	(1) (2)3.46275

(1) Extended to 2909 miles, using rate of progression prescribed by the Interstate Commission in Oklahoma Corporation Commission v. A. & S. Ry. Co., 98 I. C. C. 185–265.

(2) After absorbing terminal charges at New Orleans.

[fol. 466]

COMPLAINANT'S EXHIBIT No. 99

Witness: Ackerman

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 19130

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL

Comparison of Rates and Charges Assessed for Transportation Deciduous Fruits from California Producing Territory to Eastern Rat
with Summary of Average Rates and Charges Assessed for Transporting in Other Territories Commodities of Similar Trans

Commodity	From	To	Distance	Rates	Weights	Car earnings
			Rates	Charged		
Deciduous Fruits	California Origins	Group A	3153	$1.73	B-30000 / M-26000	$519.00
		Group B	2727			
		Group C	2499			
		Group D	2260			
		Group E	2271			
		Group F	2039			
		Group G	1903			
		Group H	2065			
		Group J	1514			
		Weighted Average	2909	1.62	B-30000 / M-26000	486.00
			Rates	Requested		

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earnings on other rates set forth therein. The even numbered exhibits were similar in form to Complainant's Exhibit No. 77. Each of these consisted of an extension of the rates set forth in the exhibit immediately preceding and the earnings thereon to a distance of 2,909 miles, using the rate of progression prescribed by the Interstate Commerce Commission in Oklahoma Corporation Commission v. A. & S. Ry. Co., 98 I. C. C. 185, and set forth in Complainant's Exhibit No. 75.

The substance of Complainant's Exhibits Nos. 79 to 98, inclusive, is as follows:

(Here follows statement showing substance of Exhibits 79 to 98, inc., marked side folio page 464)

[fol. 465] Thereupon there was offered and received in evidence Complainant's Exhibit No. 99. This exhibit is a summary of all the rates shown on Exhibits Nos. 62 to 98, inclusive, and is in the following form:

(Here follows Complainant's Exhibit No. 99, marked side folio pages 466 and 467)

[fol. 468] Thereupon there was offered and received in evidence Complainant's Exhibit No. 100, which is an explanation of the symbols used throughout the exhibits and is in the following form:

[fol. 469] EXHIBIT No. 100

Complainant's Witness Ackerman

I. C. C. Docket 19130

California Growers' and Shippers' Protective League

Explanation of Reference Marks and Symbols Used in Exhibits Nos. 62 to 99

Legend

A. Average distance via all routes of 50,251 cars as shown in California Shippers and Protective League—100 I. C. C. 79.

B. Average loading of all traffic as shown in California Shippers and Protective League—Docket 19130.

C. Average loading of 9,595 Cars of fresh vegetables which originated on St. L. B&M Ry. during year 1924 Authority I. C. C. Commodity. Statistics for year 1924.

D. Average loading of 4,668 cars of deciduous fruits which originated on MP and St. L. B&M during year 1924, I. C. C. Statement 25100.

E. Average loading of 1,091 cars of deciduous fruits which originated on T & P during year 1924, I. C. C. Statement 25100.

F. Average loading of L&N R. R. Co. for year 1924—21,300 pounds, Bananas from Gulf Ports—109 I. C. C. 211.

G. Average loading of T. & P. for year 1922—20,190 pounds, Dawson Products Co.—101 I. C. C. 197.

H. Average loading of 34,749 Cars of Citrus Fruit which originated on A. C. L. R. R. year 1924—I. C. C. Statement 24,100.

J. Fair average loading on all Pineapples—Reported by Fruit Dispatch Company and Illinois Central's Chicago Local Office.

K. Average distance and route as reported by the Commission in Fruit and Vegetables 43 I. C. C. 294-300.

L. Average loading of 28,243 Cars of Deciduous fruit originated on Illinois Central during year 1924—I. C. C. Statement 25100.

M. Minimum weight.

N. Average loading as reported by I. C. C. in Fruit and Vegetables 43 I. C. C. 294 and Mississippi R. R. Commission v. A. & R. R. R. Co.—98 I. C. C. 55.

[fol. 470] O. Fair average loading of Coconuts—Reported by Fruit Dispatch Company, Chicago.

P. Fair average loading of Cantaloupes—Reported by Fruit Dispatch Company and A. T. & S. F. R. Local Office.

Q. Fair average loading of Southern Peaches of which cars usually contain 386 Baskets—Battaglia Bros.—Chicago, Ill.

S. Average loading of 7,370 Cars of Vegetables originating on Illinois Central during year 1924 I. C. C. Statement 25100.

T. Average car of Celery contains 336 Crates of an average weight of 70 pounds to the crate "Zulfer & Co. v. Director General 112 I. C. C. 723—725.

U. Average loading of Eastern Concord Grapes shown on Carrier's Exhibit No. 44 in California Growers and Shippers Protective League 100 I. C. C. 79.

V. Average distance quoted by the Interstate Commerce Commission in Fruit and Vegetables between Pacific Coast States 104 I. C. C. 66-70.

Tariff Citations

(1) H. G. Toll's I. C. C. 1174.
(2) C. R. I. & P. Ry. Co.'s I. C. C. 11603.
(3) J. E. Johanson's I. C. C. 1909.
(4) W. P. Emerson's I. C. C. 113.
(5) H. G. Toll's I. C. C. 1178.
(6) H. G. Toll's I. C. C. 1177.
(7) W. P. Emerson's I. C. C. 114.
(8) A. T. & S. F. I. C. C. 9949.
(9) Southern I. C. C. A-10015.
(10) Southern I. C. C. A-10012.
(11) A. C. L. R. R. Co., I. C. C. B-2176.
(12) J. E. Johanson's I. C. C. 1802.

Distance Tariffs Used for Determining Distances

A. C. L. R. R. I. C. C. B 2141.
B. T. Jones' I. C. C. 1332.
C. B. & Q. R. R. Co. I. C. C. 15575.
C. & E. I. Ry. Co. I. C. C. 153.
C. R. I. & P. Ry. Co. I. C. C. C 11103.
C. R. I. & P. Ry. Co. I. C. C. C 10657.
C. & N. W. Ry. Co. I. C. C. 9301.
C. M. & St. P. Ry. Co. I. C. C. B 5206.
Illinois Central R. R. Co. I. C. C. A 9042.
N. P. R. R. Official Guide I. C. C. 7862.
S. P. Company I. C. C. 4311."

[fol. 471] I now present Complainant's Exhibit No. 101. This exhibit is introduced for the purpose of showing the extent of my study of the deciduous fruit rates in the United States. It will be noted that I have pretty thoroughly covered the entire territory where there is a pro-

duction. The points of origin are shown in the open circles and the destinations are shown by the heavy black dot.

I have not dealt with the rates on grapes from Michigan or western New York for the reason that those are mainly short haul rates, moving in most instances for distances of less than five hundred miles. I do not believe they are of any value to the Commission in testing a rate of 2,900 or 3,000 miles. I made no effort to determine whether they were higher or lower by making a projection because they were for such short haul distances. Furthermore, much of the crop from Michigan comes to Chicago by water and does not move by rail.

I did not show all of the lines radiating from the points of origin to all of the destinations, because it would have become a jumble of lines and would not show anything.

There is a production of peaches in Maryland but it moves for very short hauls. A great deal moves in motor trucks. I think those rates cover entirely too short a distance to be of value to the Commission.

I have not included in my study the rates on deciduous fruit from the Northwest to Transcontinental territory because those rates are part of this same adjustment and it would be like comparing an article with itself. I have not included the rates from Utah or Colorado to Transcontinental territories because they are part of the same adjustment.

Thereupon there was offered and received in evidence Complainant's Exhibit No. 101, which is in the following form:

(Here follows Exhibit No. 101, marked side folio page 472)

[fol. 473] I now present Complainant's Exhibit No. 102. This is a compilation of traffic statistics of the roads shown and is introduced for the purpose of showing the very high traffic density of the California deciduous fruits.

I wish to call attention to the long hauls of deciduous fruits over the Santa Fe, Southern Pacific, Union Pacific System and Western Pacific Railroad, particularly as compared with the average haul of the other lines which handle

FOLD OUT IS TOO LARGE TO BE FILMED

[fol. 474]

COMPLAINANTS' EXHIBIT No. 102

Witness: Ackerman

Statement of Deciduous Fruit Statistics Showing Number of Cars Originating on Lines, Total Cars Handled, Total Miles of Road Operated, Total Tons Carried One Mile, and Revenue Tons One Mile per Mile of Road, of Principal Fruit Carrying Railroads in the United States

Year Ended December 31, 1924

Deciduous Fruits

Railroad	(1) Average miles operated	(2) No. cars originated	No. cars handled	(1) Tons carried one mile	Revenue tons one mile per mile of road	(1) Revenue tons 1 mile per mile of road based on road average weighted hauls: Average haul	Revenue tons one mile per of road
South Coast Lines							
A.T. & S.F. Ry.	11,836.98	85,725	37,000	1,085,360,496	91,692	2117.0	512,688
S.P. Co. Pacific System	8,947.10	71,920	86,876	811,712,092	90,713	671.02	1,209,668
U.P. System	9,510.43	14,439	63,737	971,076,278	101,890	995.8	975,172
W.P.R.R.	1,042.68	2,330	9,297	87,437,771	83,858	665.78	131,331
N.W.P.R.R.	488.36	3,212	4,644	3,984,398	8,158	54.5	73,108
Colorado and Utah Lines							
D. & R.G.W.R.R. Co.	2,600.30	5,808	8,806	56,376,458	21,680	456.98	123,367
C. & S.Ry. Co.	1,091.63	96	3,469	15,643,883	14,330	324.0	48,283
U.P.R.R.	3,713.61	351	*	*	*	*	*
Prairie Lines							
C. & N.W.Ry. Co.	8,462.83	2,020	32,889	175,017,190	20,680	366.0	478,189
C.B. & Q. Ry. Co.	9,407.23	3,676	18,792	134,273,493	14,273	483.98	277,436
C.M. & St.P. Ry.	10,986.92	1,454	20,051	139,296,002	12,682	468.0	297,641
South-Western Lines							
St.L.B. & M. Ry.	550.22	55	330	1,320,912	2,400	302.0	4,373
I. & G.N. R.R.	1,159.50	534	1,606	6,223,693	5,367	230.7	26,977
S.A.U. & G.R.R.	317.26	466	512	629,794	1,985	85.4	7,374
C.R.I. & P. Ry. Co.	8,072.69	3,212	27,345	267,637,365	33,153	758.0	353,083
M.P. R.R.	7,359.97	4,613	16,465	24,994,966	3,396	448.73	55,701
St. L. & S.F. Ry.	5,166.83	7,232	14,284	59,601,071	11,535	334.0	178,446
			(3) 9,337				
M.K. & T. Lines	(4) 3,193.14	(3) 1,030	(4) 5,290	(4) 30,309,940	9,492	(4) 408.3	74,234
T. & P. Ry.	1,952.74	1,091	8,028	36,813,493	18,852	366.0	100,583
G.H. & S.A. Ry.	3,008.26	1,451	19,423	133,138,504	44,257	495.53	268,678
S.A. & A.P.	739.36	548	974	3,051,195	4,126	222.75	13,697
Southern Lines							
Illinois Central R.R.	4,849.74	28,243	56,775	394,816,003	81,409	558.0	707,555
Southern Ry.	6,868.61	10,853	30,512				
L.& N. R.R.	5,044.05	6,386	23,587				
S.A.L. Ry.	3,571.19 (5)	4,871	13,658	(2)			
F.E.C. Ry.	763.01	522	4,073				
M. & C. R.R.	1,164.59	1,056	6,595				
A.B. & A. Ry.	639.88	2,231	2,942				
C. of Ga. Ry.	1,920.64	14,124	19,180				
N. & S. R.R.	931.88	1,415	1,566				
G.S. & F. Ry.	401.74	2,701	6,530				
Eastern Lines							
Erie R.R.	2,325.45	2,108	62,166				
N.Y.C. R.R.	6,898.42	25,154	54,319				
P. R.R.	10,508.00	19,730	87,019				
B. & O. R.R.	5,292.89	6,362	24,595				
M.C. R.R.	1,862.25	1,550	16,973				
N.Y.C. & St.L. R.R. Co.	1,695.30	2,103	14,413				

[fol. 476] Authority:

I. C. C. Statement No. 25100, Freight Commodity Statistics Class 1 Steam Railroads of United States.
Carrier's Exhibits Nos. 34 and 43 Ex Parte 87.
I. C. C. Statistics of Common Carriers.
(1) Reported in carriers' exhibits Nos. 34 and 43—Ex Parte 87.
(2) Reported in I. C. C. Statement No. 25100.
(3) Total of M.K.-T.R.R., and M.K.-T.R.R. of Texas reported in I. C. C. Statement No. 25100.
(4) Reported in carriers' exhibit No. 34—Ex Parte 87.
(5) Statistics of Railways in the United States Year 1924—By Interstate Commerce Commission.
* Included in U. P. System.

[fol. 478]

COMPLAINANTS' EXHIBIT No. 103

Witness: Ackerman

California Growers' and Shippers' Protective League

I. C. C. Docket 19130

Statement of Fresh Vegetable Statistics, Showing Number of Cars Originating on Lines, Total Cars Handled, Total Miles of Road Operated, Total Tons Carried One Mile, and Revenue Tons One Mile per Mile of Road, of Principal Fruit Carrying Railroads in the United States

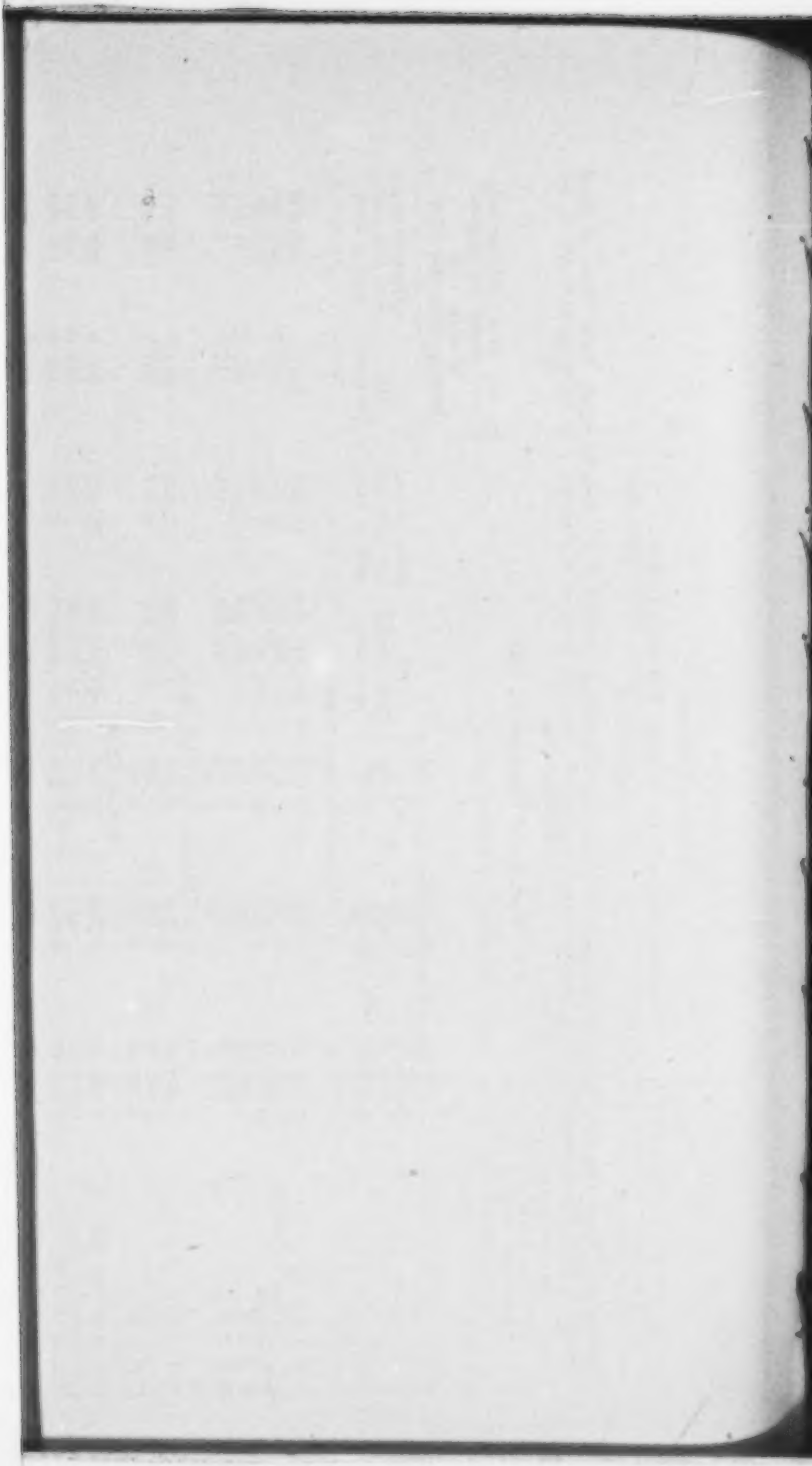
Year Ended December 31, 1924

	(1) Green Vegetables other than Potatoes					Revenue tons 1 mile per mile of road based on weighted average haul Average vegetables haul	
	Average miles operated	(2) No. cars originated	(1) No. cars handled	(1) Tons carried one mile	Revenue tons one mile per mile of road	(1) Distance	Revenue tons one mile per mile of road
Southern Coast Lines							
A.T. & S.F. Ry.	11,836.98	8,896	12,854	200,247,264	16,917	1278.	156,668
S.P. Co. Pacific System	8,948.10	29,191	35,623	318,386,911	35,581	731.86	435,038
U.P. System	9,510.43	7,316	20,395	203,047,453	21,350	791.5	402,257
W.P. R.R.	1,042.68	926	1,541	12,687,088	12,167	601.97	21,075
N.W.P. R.R.	488.36	170	172	203,621	416	55.3	3,682
Colorado and Utah Lines							
D. & R.G.W. R.R. Co.	2,600.30	2,243	2,481	8,932,464	3,435	263.4	33,912
C. & S. Ry. Co.	1,091.63	1,441	2,797	9,207,751	8,434	266.0	34,610
U.P. R.R.	3,713.61	3,007	*	*	*	*	
Prairie Lines							
C. & N.W. Ry. Co.	8,462.83	3,753	8,542	29,584,144	3,495	240.0	123,267
C.B. & Q. Ry. Co.	9,407.23	917	3,808	19,376,798	2,038	383.96	50,4[illegible]
C.M. & St.P. Ry.	10,986.92	4,063	8,228	31,669,618	2,882	229.6	137,933
[fol. 479]							
South-Western Lines							
St.L.B. & M. Ry.	550.22	9,595	11,106	44,375,560	80,650	310.	143,146
I.C.N. R.R.	1,159.50	4,080	7,458	32,388,278	27,932	355.72	91,049
S.A.U. & G.R.R.	317.26	2,235	2,687	4,402,932	13,877	142.5	30,897
C.R.I. & P. Co.	8,072.69	3,648	18,735	204,317,655	25,309	888.0	230,087
M.P. R.R.	7,359.97	4,194	11,651	67,533,786	9,175	474.35	142,371
St.L.-S.F. Ry.	5,166.83	2,700	2,346	12,227,973	2,366	402.0	30,417
M.K.-T. Lines	3,193.14	(3) 241	(4) 2,780 4,905	19,743,000	6,182	(4)530.1	37,243
T. & P. Ry.	1,952.74	269	(3) 9,682	33,688,912	17,252	284.0	118,622
G.H. & S.A. Ry.	3,008.26	294	14,862	31,339,652	10,417	135.75	230,862
S.A. & A.P.	739.36	236	983	4,584,814	6,201	279.05	16,430
Southern Lines							
Illinois Central R.R.	4,849.74	7,370	29,242	170,245,762	35,031	471.0	361.455
Southern Ry.	6,868.61	1,954	10,787				
L. & N. R.R.	5,044.05	2,225	8,998				
S.A.L. Ry.	3,571.19 (5)	6,888 (2)	11,354	(2)			
F.E.C. Ry.	763.01	8,100	8,566				
M. & O. R.R.	1,164.59	935	2,324				
A.B. & A. Ry.	639.88	88	1,808				
C. of G. Ry.	1,920.64	133	2,943				
N. & S. R.R.	931.88	1,771	1,838				
G.S. & F. Ry.	401.74	116	1,319				
Eastern Lines							
Erie R.R.	2,325.45	2,920	15,883				
N.Y.C. R.R.	6,898.42	16,720	26,804				
P. R.R.	10,508.00 (5)	20,065 (2)	74,447	(2)			
B. & O. R.R.	5,292.89	3,405	9,605				
M.C. R.R.	1,862.25	896	9,161				
N.Y.C. & St.L. R.R. Co.	1,695.30	1,344	5,517				

[fol. 480] Authority:

I. C. C. Statement No. 25100, Freight Commodity Statistics Class I.
Steam Railroads of United States.
Carrier's Exhibits Nos. 34 and 43, Ex, Parte 87.
I. C. C. Statistics of Common Carriers.

(1) Reported in carriers' exhibits Nos. 34 and 43, Ex Parte 87.
(2) Reported in I. C. C. Statement No. 25100.
(3) Total of M.K.-T. R.R., and M.K.-T. R.R. of Texas reported in I. C. C. Statement No. 25100.
(4 Reported in carriers' exhibit No 34, Ex Parte 87
(5) Statistics of Railways in the United States Year 1924—By Interstate Commerce Commission.
* Included in U. P. System.



deciduous fruits. I wish also to call particular attention to the revenue tons one mile per mile of road, based upon those average hauls. These figures bear out my contention that there is nothing in the United States that equals the traffic density of deciduous fruits from California on that or similar commodities.

Thereupon there was offered and received in evidence Complainant's Exhibit No. 102, which is in the following form:

(Here follows Exhibit No. 102, marked side folio pages 474, 475 and 476)

[fol. 477] Complainant's Exhibit No. 103, which I now present, deals with traffic density figures on green vegetables, other than potatoes. It is presented for the purpose of comparing the movement of green vegetables with the movement of deciduous fruits from California.

Thereupon there was offered and received in evidence Complainant's Exhibit No. 103, which is in the following form:

(Here follows Exhibit No. 103, marked side folio pages 478, 479 and 480)

[fol. 481] I now present Complainant's Exhibit No. 104, which shows the traffic density of citrus fruits from California and citrus fruits hauled by other lines in the West. It will be noted that the traffic density of citrus fruit is not comparable with that of deciduous fruit shown on Exhibit No. 102.

Thereupon there was offered and received in evidence Complainant's Exhibit No. 104, which is in the following form:

[fol. 482]

EXHIBIT No. 104

Complainant's Witness: Ackerman

I. C. C. Docket 19130

California Growers' and Shippers' Protective League

Statement of Citrus Fruit Statistics Showing Number of Cars Originating on Lines, Total Cars Handled, Total Miles of Road Operated, Total Tons Carried One Mile and Revenue Tons One Mile per Mile of Road of Principal Citrus Fruit Carrying Railroads in Western Region

Year Ended December 31, 1924

Railroad	(2) Average mile operated	(3) No. cars originated	(2) No. cars handled	(2) Ton carried one mile	Revenue tons one mile per mile of road	(2) Average haul	Revenue tons 1 mile per mile of road based on weighted haul
A.T.S.F. Ry.	11,836.98	25,172	28,664	728,377,920	61,534	1539.	473,280
S.P. Co. Pacific System	8,948.10	22,613	33,971	461,439,714	51,568	781.48	590,468
U.P. System	(2) 9,510.23	(1) 3,710	(2) 16,569 (1) 31,121	(2) 344,738,633	36,249	(2) 1192.5	289,089
W.P. R.R.	1,042.68	187	395	3,884,805	3,725	551.51	7,043
N.W.P. R.R.	488.36	4	13	36,368	74	166.8	218
D. & R.G.W. R.R. Co.	2,600.30	19	207	1,542,797	593	462.33	3,337
C. & S. Ry. Co.	1,091.63	3	347	1,609.166	1,474	266.0	6,049
C. & N.W. Ry. Co.	8,462.83	57	3,719	24,818,287	2,932	389.0	63,800
I.C. R.R.	4,849.74	97	9,952	62,413,764	12,889	397.0	157,213
C.M. & St.P. Ry. Co.	10,986.92	41	4,249	35,308,613	3,213	485.0	72,801
C.R.I. & P. Ry. Co.	8,072.69	82	12,562	179,524,744	22,238	823.0	218,134
C.B. & Q. Ry. Co.	9,407.23	52	2,609	20,527,470	2,182	471.22	43,562

Authority:

I. C. C. Statement No. 25100, Freight Commodity Statistics Class 1 Steam Railroads of United States.
Carriers' Exhibits Nos. 34 and 43, Ex. Parte 87.
(1) Total of St.J. & G.I. Ry., O.S.L. R.R., La. & S.L. R.R., O.W. R.R. & N. Co., and U.P. R.R. Reported in Statement No. 25100.
(2) Reported in Carriers' Exhibit No. 43, Ex. Parte 87.
(3) Reported in I. C. C. Statement No. 25100.

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928

No. 273

THE ANN ARBOR RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION AND THE CALIFORNIA GROWERS' & SHIPPERS' PROTECTIVE LEAGUE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED JULY 14, 1928

(33,582)

(33,582)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

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vs.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION AND THE CALIFORNIA GROWERS' & SHIPPERS' PROTECTIVE LEAGUE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 15, 1928

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[fol. 483] I now present Complainant's Exhibit No. 105. The fourth railroad shown on page 4 should read L. A. and S. L. This exhibit shows operating statistics as reported to the Interstate Commerce Commission by the carriers. It is introduced for the purpose of showing the regular operating conditions of the transcontinental carriers as compared with other carriers handling deciduous fruits in the United States.

I wish to call attention particularly to the column headed 13-D on page 2. That shows the pounds of coal consumed per one thousand gross ton miles by the various carriers. It will be noted that the consumption of coal, or its equivalent, is less in many instances on the lines of the transcontinental carriers than on the lines operated in the flat prairie territory. To my mind, this proves that the operating conditions of the transcontinental lines over the mountains are not so difficult as they might seem and that the difficulties have been overcome by the possible use of larger locomotives or other methods or, in any event, that the consumption of power per one thousand gross ton miles is in most instances less by the mountain lines than it is by other lines in the United States.

Thereupon there was offered and received in evidence Complainant's Exhibit No. 105, which is in the following form:

Witness: Ackerman

Comparison of Operating Averages of Carriers Which Transport California Deciduous Fruits with Operating Average of Carriers Which Transport Deciduous Fruits from Other Territories
Year 1925

Carrier	Mile of road and track operated	Locomotives per 100 miles of road	Average tractive power per freight, locomotive-pounds	Traffic density, net tons per mile of road per day	Railway operating revenue per mile of road	Per cent frt. revenue to operating revenue	Railway operating expense per mile of road
A.T. & S.F.	10,168 (1)	17.4 (1)	54,588	3,543	$20,656	72.5	$14,128
S.P. (Pac. Line)	8,764	19.9	47,339	4,102	23,570	71.2	16,622
W.P.	1,046	14.8	49,533	4,155	14,932	79.2	10,869
L.A. & S.L.	1,208	17.6	49,436	3,065	20,320	70.0	16,213
U.P. R.R.	3,688	24.9	52,315	6,717	29,865	76.1	19,419
C.R.I. & P.	8,022	19.9	40,563	3,136	16,277	73.4	12,551
C.B. & Q.	9,404	21.0	44,429	4,182	16,934	74.6	12,414
C. & N.W.	8,469	24.1	42,029	3,167	18,957	70.6	13,655
C.M. & St. P.	11,206	19.2	40,168	3,344	14,460	77.6	11,642
Erie	2,451	53.3	54,418	12,504	51,035	79.9	40,140
Penna. R.R.	10,894	65.7	54,048	12,306	62,931	68.5	49,388
N.Y.C. R.R.	6,931	54.3	42,398	9,969	55,694	62.2	41,907
Compared Railroads, Southern Lines							
Southern Ry.	6,791	25.3	45,497	3,840	21,722	71.5	15,102
L. & N. R.R.	5,038	26.5	44,064	7,353	28,212	78.1	21,500
N.C. & St. L.	1,259	21.6	44,577	3,101	19,062	72.2	15,238
A.C.L.	4,924	20.3	46,534	3,088	19,221	68.8	13,284
S.A.L.	3,929	16.4	42,068	2,732	16,612	69.8	12,349
M. & O.	1,161	18.7	40,478	4,597	16,580	86.2	11,504
Interterritorial Line							
Ill. Cent.	6,255	30.5	44,561	7,354	28,484	77.0	21,644

[fol. 485]

	Operating Ratio			13-D pounds of coal per 1,000 G.T. miles	Cost of maintenance of ways and structives per equated track mile	Revenue ton-mile-mills
	Freight	Passenger	Total			
A.T. & S.F.	65.0%	78.1%	68.4%	147	$2,181	13.12
S.P. (Pac. Line)	67.4	85.6	72.2	153	2,565	14.03
W.P.	68.6	92.8	72.8	137	2,410	9.54
L.A. & St.L.	71.2	102.8	79.8	175	3,229	14.82
U.P. R.R.	59.0	83.3	65.0	137	2,410	11.05
C.R.I. & P.	73.5	88.1	77.1	190	1,708	12.12
C.B. & Q.	69.6	85.9	73.3	179	1,685	9.65
C. & N.W.	78.8	85.4	80.7	190	1,674	12.66
C.M. & St.P.	73.8	108.4	80.5	187	1,649	10.5
Erie	75.0	95.3	78.6	156	3,249	10.
Penna. R.R.	78.6	78.1	78.5	180	4,506	10.45
N.Y.C.	82.3	62.3	75.2	165	4,255	10.69
Compared Railroad, Southern Lines						
Southern Ry.	69.6	69.2	69.5	205	2,368	12.91
L. & N. R.R.	76.6	74.5	76.2	200	3,229	8.89
N.C. & St.L.	78.8	83.2	79.9	200	2,252	13.26
A.C.L.	67.0	74.1	69.1	155	1,801	14.56
S.A.L.	68.5	89.1	74.3	179	1,884	13.30
M. & O.	68.8	98.1	72.1	186	2,428	9.30
Interterritorial Line						
Ill. Cent.	70.7	95.9	76.0	164	3,081	9.21

[fol. 486]

Carrier	Average earnings per freight-train mile	Revenue per loaded-car mile	Cars per train	Miles per hour trains in freight service	Gross ton-miles: Per train hour (31)	Gross ton-miles: Per train mile (32)	Car-mile per freight-car day	Locomotive miles per locomotive day
A.T. & S.F.	$7.61	24.4c	48.3	13.6	24,695	1,812	35.	62.4
S.P. (Pac. System)	8.21	29.5	46.4	11.5	20,527	1,785	36.8	67.2
W.P.	6.60	21.	45.5	14.4	26,255	1,818	43.4	63.
L.A. & S.L.	7.83	29.7	41.3	13.1	20,598	1,572	39.	59.2
U.P. R.R.	7.03	19.5	52.7	15.9	31,597	1,984	59.2	65.
C.R.I. & P.	5.54	23.1	36.5	12.9	16,979	1,319	30.6	65.9
C.B. & Q.	6.45	22.5	45.6	12.7	21,685	1,705	32.5	54.
C. & N.W.	5.98	25.	37.9	12.3	16,956	1,377	23.7	52.4
C.M. & St. P.	6.57	23.	43.8	11.9	19,473	1,630	29.3	52.7
Erie	8.45	22.9	56.5	11.3	24,844	2,189	30.3	51.7
Penna. R.R.	8.47	29.9	44.2	10.6	19,706	1,858	22.5	52.4
N.Y.C.	8.57	24.9	54.8	11.7	24,305	2,072	28.5	55.2
Compared Railroads, Southern Lines								
Southern Ry.	5.81	25.	35.3	12.6	16,170	1,284	28.0	55.1
L. & N. R.R.	5.13	26.6	31.5	11.4	14,759	1,289	30.4	92.
N.C. & St.L.	5.47	24.6	31.9	13.5	15,358	1,140	30.5	74.5
A.C.L.	6.35	25.3	40.3	11.7	16,222	1,386	29.4	66.9
S.A.L.	6.40	26.1	37.7	10.9	14,838	1,364	30.	75.0
M. & O.	5.17	21.2	33.8	13.7	18,026	1,313	36.3	79.4
Interterritorial Lines								
Ill. Cent.	6.23	22.1	44.2	12.4	21,788	1,756	39.1	71.4

[fol. 487]

Carrier	Gross ton-miles per locomotive (thousand)	Maintenance of equipment, per cent of operating		Total maintenance expense, per cent of operating		Transportation expenses, per cent of operating		Material and supplies per mile of road
		Revenue	Expenses	Revenue	Expenses	Revenue	Expenses	
A.T. & S.F.	36,190	19.8%	29. %	33.7%	49.2%	30.7%	44.9%	$2,090
S.P. (Pac. System)	34,419	16.2	22.4	28.8	39.9	37.	51.2	2,472
W.P.	34,551	15.8	21.7	30.2	41.4	33.7	46.3	1,754
L.A. & S.L.	28,018	19.	23.8	36.3	45.5	33.2	41.7	1,585
U.P. R.R.	43,207	19.6	30.2	31.2	48.1	26.9	41.4	2,246
C.R.I. & P.	30,269	21.6	28.1	33.6	43.6	38.2	49.5	1,422
C.B. & Q.	31,099	21.2	28.9	33.6	45.8	34.6	47.2	1,690
C. & N.W.	25,103	20.6	26.5	34.7	44.6	38.3	31.5	1,598
C.M. & St.P.	28,147	24.5	30.4	38.2	47.4	37.7	46.8	1,248
Erie	33,780	23.3	29.7	34.7	44.1	38.5	49.	4,622
Penna. R.R.	30,493	24.	30.5	36.7	46.7	36.6	46.6	4,214
N.Y.C.	34,624	21.	28.	34.7	46.1	34.8	46.2	5,074
Compared Railroad, Southern Lines								
Southern Ry.	24,543	17.2	24.	30.9	44.4	33.4	48.	1,586
L. & N.R.R.	39,347	22.6	29.6	36.9	48.4	34.5	45.3	2,895
N.C. & St. L.	29,693	21.7	27.2	36.3	45.4	35.7	44.7	2,089
A.C.L.	32,517	18.7	27.	30.2	43.7	34.4	49.7	1,501
S.A.L.	35,770	16.1	21.7	29.6	39.8	36.5	49.1	1,387
M. & O.	34,608	17.	23.6	31.6	43.9	34.5	47.8	1,119
Interterritorial Lines								
Ill. Cent.	44,444	21.7	28.6	36.5	48.	35.1	46.1	2,234

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[fol. 488]

	Commodities per cent of total carried					Average haul revenue ton frt. miles
	Agricultural	Ani-als & pdts.	Mines	Forest	Mfgd. & misc.	
A.T. & S.F.	20.	4.6	36.2	5.1	30.7	310.3
S.P. (Pac. Systems)	13.1	2.	37.3	24.3	20.9	245.1
W.P.	13.7	2.2	34.9	24.1	23.2	367.4
L.A. & S.L.	8.1	2.1	49.4	6.8	32.5	157.8
U.P. R.R.	31.9	6.7	27.3	10.8	20.3	430.3
C.R.I. & P.	22.9	5.5	34.7	7.2	25.8	264.5
C.B. & Q.	18.3	6.8	44.4	5.5	21.1	284.
C. & N.W.	12.1	4.8	47.	11.8	20.7	148.7
C.M. & St. P.	14.1	5.	36.2	20.7	20.5	241.3
Erie	11.	2.8	49.	4.4	30.	220.8
Penna. R.R.	4.5	1.	61.1	4.2	26.	196.2
N.Y.C. c	7.	2.4	56.	3.9	27.3	202.
Compared Railroads, South Lines						
Southern Ry.	9.6	1.1	42.7	16.8	24.	181.8
L. & N. R.R.	5.2	0.9	71.4	6.8	13.1	215.3
N.C. & St. L.	22.	3.3	25.6	14.3	27.1	191.5
A.C.L.	11.9	0.9	32.9	26.3	23.3	185.5
S.A.L.	10.7	1.1	35.3	19.1	28.7	184.7
M. & O.	19.7	2.1	27.9	27.9	18.6	261.6
Interterritorial Lines						
Ill. Cent.	12.9	2.1	47.8	14.9	19.	255.8

13-D. Pounds of coal per 1,000 gross Ton Miles, include the equivalent coal tonnage for fuel oil and wood used in Steam Locomotives and Electric Power used by Electrical Locomotives.

31, 32. Gross Ton Miles (Excluding locomotives) relate to freight service including a proportion of mixed and special train service.

Authority:

I. C. C. Statement No. 26200 Comparative Statement of operating averages.

c Includes B. & A.

(1) Includes also G.C. & S.F.

[fol. 489] Complainant's Exhibit No. 106, which I now present, is similar to Exhibit No. 105, except that it deals merely with the operating income per mile of road and the percent of the movement of loaded freight equipment to the total movement of freight equipment. The exhibit shows that the average empty car movement on the transcontinental lines is not much different than that of all the other lines shown.

Thereupon there was offered and received in evidence Complainant's Exhibit No. 106, which is in the following form:

[fol. 490] "COMPLAINANT'S EXHIBIT No. 106

Witness: Ackerman

Comparison of Operating Averages of Carriers Which Transport California Deciduous Fruits with Operating Average of Carriers Which Transport Deciduous Fruits from Other Territories

Year 1925

Carrier	Net operating income per mile of road	Car miles, per cent loaded to total
A. T. & S. F.	$4,813	64.7%
S. P. (Pacific Line)	4,572	64.5%
W. P.	4,122	69.6%
L. A. & St. L.	1,923	63.8%
U. P. R. R.	7,863	68.7%
C. R. I. & P.	2,233	65.9%
C. B. & Q.	2,993	63.1%
C. & N. W.	2,493	63.2%
C. M. & St. P.	1,506	65.4%
Erie	7,547	65.4%
Penna. R. R.	9,297	64.1%
N. Y. C.	9,800	62.9%

Compared Railroads, Southern Lines

Southern Ry	$5,104	66. %
L. & N. R. R	5,343	61.3%
N. C. & St. L	3,127	69.9%
A. C. L	4,127	62.3%
S. A. L	3,859	65.4%
M. & O	3,137	72.7%

Interterritorial Line

Ill. Cent	$4,784	63.9%"

[fol. 491] Cross-examination:

I used the cottonseed scale as the basis of the projection of these rates because that was the only case where I know that the Interstate Commerce Commission has projected the distance scale from the East to the Pacific Coast territory or from the Pacific Coast territory to the East. I did not try out the Wool Case because I did not know that they made a distance scale from the Pacific Coast. I did not find any scale extended to such distances as the scale which I have used. I would not say that this particular scale which I have selected has the lowest rate of progress of any scale in the United States. I made my calculations with the fruit scale in the Memphis Southwest case, which did not extend beyond eight hundred or a thousand miles. I found that that scale would break down rates faster than the cottonseed case would. I did not use that scale because it did not extend the proper distance.

Assuming that cottonseed and oil traffic is handled without diversion and is not handled through difficult terminals, such as Chicago, I think that the rate of progression should be the same on that traffic as on the deciduous fruit traffic. If there is anything that ought to be added for those services, it would be included in the rate, but it would not affect the rate of progression. The traffic which moves under distance scales fixed by the Commission as first class ordinarily has no similarity in transportation to the traffic moving under Class E, but the rate of progression is the same.

Thereupon, there was offered and received in evidence, for such facts or findings of fact as it contains, Complainant's Exhibit No. 107, which is the decision of the Interstate Commerce Commission in Docket No. 15,137, and is in the following form:

10436

[fol. 491-1] INTERSTATE COMMERCE COMMISSION

No. 15137

CALIFORNIA GROWERS' & SHIPPERS' PROTECTIVE LEAGUE v. SOUTHERN PACIFIC COMPANY et al.

Submitted February 19, 1925. Decided June 25, 1925

Rates on fresh deciduous fruits other than apples, in carloads, from California points to eastern transcontinental groups found not unreasonable or unduly prejudicial. Complaint dismissed.

Allan P. Matthew, H. M. Remington, and McCutcheon, Olney, Mannon & Greene for complainant.

Hugh Gordon, W. P. Geary, Carl I. Wheat, and Woodward M. Taylor for Railroad Commission of State of California; Seth Mann for San Francisco Chamber of Commerce and California Development Association; Fred P. Gregson for Los Angeles Chamber of Commerce; E. W. Hollingsworth for Oakland Chamber of Commerce; R. N. Wilson for Sacramento Chamber of Commerce; Frank M. Hill for Fresno County Chamber of Commerce; J. C. Sommers for Stockton Chamber of Commerce; W. D. Wall for San Jose Chamber of Commerce; H. E. Webb for Santa Rosa Chamber of Commerce; and George W. Ashley for Lodi District Chamber of Commerce, interveners for complainant.

Elmer Westlake, Fred H. Wood, J. R. Bell, G. H. Muckley, T. J. Norton, E. W. Camp, A. S. Halsted, E. E. Bennett, Jas S. Moore, jr., Robert H. Widdicombe, M. B. Pierce, J. E. Lyons, F. W. Mielke, and W. F. Dickinson for defendants.

Max Thelen and Wyckoff & Gardner for Chamber of Commerce of Watsonville and Sebastopol Apple Growers' Union; F. W. Brown for South Shore Cooperative Grape Association of Silver Creek, N. Y.; and Barry Mohun for Keystone Cooperative Grape Association, intervenors for defendants.

REPORT OF THE COMMISSION

Division 1, Commissioners McChord, Lewis, and McNamany

McNAMANY, Commissioner:

Complainant and intervenors in its behalf filed exceptions to the report proposed by the examiner, defendants replied thereto, and the parties were heard in oral argument.

[fol. 491-2] Complainant is an incorporated association of growers and shippers of deciduous fruits in California, and of associations of such growers and shippers, representing approximately 15,000 growers and substantially 85 per cent of the total production of such fruits in that States. It alleges that the rates on fresh deciduous fruits other than apples, in carloads, from California points to eastern transcontinental groups are unreasonable, and that they are unduly prejudicial as compared with the rates on apples, in carloads, from and to the same points or groups and by comparison with the level of the rates on other commodities in general, in violation of sections 1 and 3 of the interstate commerce act. It asks that the rates of $1.62 to Group J and $1.73 to the other eastern transcontinental groups be reduced to $1.44, the basis in effect prior to the general increases on August 26, 1920. These and other rates throughout the report are stated in amounts per 100 pounds and apply on carload shipments. The term deciduous fruits will be used to designate fresh deciduous fruits other than apples, and deciduous tree fruits refers to deciduous fruits other than apples and grapes.

The California Railroad Commission, California Development Association, and the chambers of commerce of San Francisco, Los Angeles, Oakland, Sacramento, Fresno County, Stockton, San Jose, Santa Rosa, the Lodi District, and other communties of California intervened on behalf of complainant. The Chamber of Commerce of Watsonville

and the Sebastopol Apple Growers' Union, representing the apple growers and shippers of those California districts, and the Keystone Cooperative Grape Association of North East, Pa., and the South Shore Cooperative Grape Association of Silver Creek, N. Y., intervened in opposition to the complaint.

Description of the Traffic

The growing and shipping of deciduous fruits is one of the great basic industries of California. The volume of production and shipments now exceeds that of citrus fruits or of almost any other product of the State, and other industries, such as the canning and drying of fruit and the production of box shooks and the like, are dependent upon it. This industry had suffered for two or years prior to the date of the hearing, December, 1923, because of a marked decline in prices received for the fruit without corresponding reductions in the cost of production, including transportation to the markets in the East, and it was said to be facing disaster. The importance of the industry to the prosperity of the State, including the carriers which serve it, is obvious.

California exceeds any other State in the production and shipment of deciduous fruits; in fact, it produced about 80 [fol. 491-3] per cent of the grapes, 32 per cent of the peaches, 28 per cent of the pears, 70 per cent of the plums and prunes, and substantially all of the apricots produced in the United States in 1919. The shipments of fresh deciduous fruits from California to the East in 1923 were more than double the number of those in 1919. Grapes constitute about three-fourths of the total movement, and the increase from 1919 to 1923 was due largely to the increased shipment of wine or juice grapes.

Deciduous fruits constitute the most important part of the perishable freight from California to the East, which traffic is by far the greatest of any handled by the transcontinental carriers serving California. Deciduous fruits constituted 29.3 per cent of the total number of carloads of all kinds of freight handled eastbound by the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, during the first 11 months of 1923. The Southern Pacific handles

more deciduous fruits than the Santa Fe. Based on a total estimated movement of approximately 70,000 carloads in 1923 and an average loading of 13.9 tons per car, the rate reduction sought would amount to $5,643,400 per year.

Grapes, peaches, apricots, pears, plums, and cherries, in about the order named, are the principal deciduous fruits of California. They are produced throughout the State from the Imperial Valley on the south, in the district between Los Angeles and San Bernardino, throughout the length of the San Joaquin Valley, Santa Clara County, the Sacramento Valley, and various other districts to as far north as Redding, the bulk of the production being north of the Tehachapi summit. A large proportion of the peaches are canned within the State. Apricots are shipped out of the State to a limited extent only, and most of the cherries are shipped by express. Carloads shipped to eastern destinations from north of the Tehachapi in 1923 to November 14 numbered 44,654 of grapes, 6,856 of pears, 5,240 of plums, 3,670 of peaches, 682 of apricots, 612 of cherries, three-fourths of the last named moving by express, and 226 of miscellaneous fruits such as quinces, figs, and nectarines.

There has been a very large increase in the volume of movement of deciduous fruits from California to the East during recent years. The number of carloads of the different kinds of deciduous fruits shipped from north of the Tehachapi to eastern destinations during the years since 1895 are shown by Table I of the appendix. It discloses that the total shipments increased rather slowly until 1907, after which there was a somewhat more rapid increase until 1916, and since then the increase has been much more rapid. The estimated shipments from north of the Techachapi in 1923 were between three and four times as many as those [fol. 491-4] in 1916, more than double those in 1919, and nearly one-third greater than in 1922. It was testified by a witness for complainant that not over 60 to 65 per cent of the planted acreage is in bearing, and he estimated that new vineyards and orchards coming into bearing would increase the production at least 20 per cent for each of the three years following 1923.

The Southern Pacific and the Santa Fe are the principal originating trunk lines, followed by the Western Pacific.

The Los Angeles & Salt Lake, hereinafter called the Salt Lake, a part of the Union Pacific system, handles a relatively small amount of the traffic. A considerable portion of the traffic originates on branches of these lines, but the bulk of it originates on their main lines. There is also a substantial movement from points on short-line connections of these carriers.

Shipments from points on the Southern Pacific or its short-line connections north of the Tehachapi are moved to Roseville, Calif., a few mile east of Sacramento, and there assembled into trains of 45 to 55 cars, averaging about 50 cars each. These move to Ogden, Utah, where they are delivered to the Union Pacific, and the latter handles them to Council Bluffs, Iowa. At this point the trains are broken up and the cars distributed, principally between the Chicago & North Western and the Chicago, Milwaukee & St. Paul, hereinafter called the North Western and the Milwaukee respectively, although the Illinois Central recives a comparatively small portion of the traffic. Most of the traffic moves over these lines to Chicago, Ill. The Southern Pacific assembles shipments from south of the Tehachapi at Colton, Calif., about 57 miles east of Los Angeles. The movement over the Southern Pacific via El Paso, Tex., is light in comparison with the movement via Ogden.

The bulk of the Santa Fe traffic originates in the southern part of the San Joaquin Valley, is assembled into trains at Bakersfield, Calif., and moves direct over that line to Chicago. The Western Pacific assembles its traffic at Sacramento. The bulk of it is delivered to the Union Pacific at Ogden, and the movement beyond is similar to traffic originating on the Southern Pacific. The Salt Lake traffic is assembled at San Bernardino, Calif., and is delivered to the Union Pacific proper at Ogden.

The traffic moves chiefly to the large cities in the territory east of the Mississippi River and north of the Ohio River to the Atlantic coast. Practically all of it moves to the Missouri River and beyond, and the traffic to the territory south of the Ohio River, usually referred to as the Southeast, is relatively light. Over 30 per cent of the traffic handled by the Southern Pacific in 1922 moved to points in the State of New York, and more than 99 per cent of this

[fol. 491-5] was to New York City. Of 16,678 carloads handled by the Santa Fe from July, 1922, to January, 1923, inclusive, 4,400 were to New York City, 1,598 to Chicago, 1,139 to Boston, Mass., 940 to Philadelphia, Pa., 809 to Pittsburgh, Pa., 677 to Jersey City, N. J., and 613 to Newark, N. J. Other cities which received from 400 to 100 carloads of the Santa Fe traffic were Detroit, Mich., Cleveland, Ohio, East Boston, Mass., Buffalo, N. Y., St. Louis, Mo., Youngstown, Ohio, Milwaukee, Wis., Baltimore, Md., Rochester, N. Y., and Kansas City, Mo., in the order named.

Beyond Chicago the Erie system handles the bulk of the traffic to New York, the Pennsylvania delivers most of the traffic to Pittsburgh and Philadelphia, and the Baltimore & Ohio delivers it at Washington, D. C., and Baltimore. The Michigan Central carries most of the traffic to Detroit and Buffalo. The New York Central delivers at Cleveland, and it turns over to the Boston & Maine the traffic for Boston. Of course, the lines mentioned participate in the traffic to other points, and many other lines participate in the traffic to some extent. In fact, almost every line in the country occasionally transports a car of California deciduous fruit.

A statement covering all of the shipments handled from California to the eastern transcontinental groups in 1922 shows that the weighted-average haul on grapes was 2,965 miles and on the deciduous tree fruits 2,751 miles, and that the average loading was 32,940 pounds for the grapes and 26,440 pounds for the other deciduous fruits, the combined average being 31,460 pounds. The record indicates that the average loading has been increased in recent years, largely by reason of the increased shipment of juice grapes. It will be noted that grapes load more heavily than the tree fruits and are transported an average of over 200 miles farther than the latter at the same rates.

The traffic ordinarily moves in refrigerator cars under refrigeration, must be stopped en route for re-icing at various points, and expedited schedules are maintained. The present schedules are 154 hours from the assembling points to Chicago, and the Erie's schedule from Chicago to New York is 65.5 hours. These schedules are slower than those maintained prior to Federal control, but they are faster than those for citrus fruit and other freight except fresh vegetables and cantaloupes.

The movement commences in June and ends in December, and is heaviest from August to November, inclusive, when operating and traffic conditions are more favorable than at other seasons.

History of Rates

The rates are blanketed from all points in California to large destination groups in the East. Originally the rates [fol. 491-6] to the territory east of Chicago were higher than those to Chicago and points west thereof. Prior to 1909 the rates to Groups D to J, roughly the territory from Chicago to Denver, Colo., fluctuated between $1.25 and $1.15, but was thereafter stabilized at $1.15. The rates to Groups A, B, and C, east of Chicago, were generally $1.40 to $1.50 until 1911, when they were reduced to $1.15, the same as to Chicago and west. This rate of $1.15 was increased to $1.44 on June 25, 1918, under General Order No. 28 of the Director General of Railroads. The rates to points in the Southeast, which had been on a higher level, were placed on the same basis in 1919 by including such points in Groups A, B, or C. Under the general increases of August 26, 1920, the rate to Group J, Denver territory, was increased 25 per cent to $1.80, and the rate to Groups A to H, inclusive, was increased 33⅓ per cent to $1.92. The 10 per cent reduction, first established temporarily on January 1, 1922, and without limit as to time on July 1, 1922, resulted in the present rates of $1.62 to Group J and $1.73 to the other groups. Points in the Southeast were placed in Groups K, L, and M on November 18, 1922, without any change in the rates.

The carload minimum was 24,000 pounds until 1911, when it was increased to 26,000 pounds, the present minimum.

Rate Comparisons

Complainant was unable to find rates on deciduous fruits in other parts of the country that it considered might fairly be compared with those assailed, because of differences in the length of haul, volume of movement, and other conditions surrounding the transportation. It compares the rates assailed with those on other perishable traffic, including the class C rates, from California to the eastern transcontinental groups as follows:

Commodity	Minimum weight Pounds	A	B	C	D	E	F	G	H	J	K	L	M
Deciduous fruits	26,000	$1.73	$1.73	$1.73	$1.73	$1.73	$1.73	$1.73	$1.73	$1.62	$1.73	$1.73	$1.73[1]
Apples	31,000[2] / 35,000[3]	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.41	1.50[1]	1.50[1]	1.50
Oranges	32,300	1.73	1.73	1.73	1.73	1.73	1.73	1.73	1.73	1.62	1.73	1.73	1.73
Lemons	26,200	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.41	1.50	1.50	1.50
Fresh Vegetables (packages)	20,000	1.75	1.73	1.65	1.46	1.46	1.39	1.39	1.39	1.34	1.75	1.73	1.65
Melons	20,000	1.75	1.73	1.65	1.46	1.46	1.39	1.39	1.39	1.34	1.75	1.73	1.65
Cantaloupes	20,000	1.75	1.73	1.65	1.46	1.46	1.39	1.39	1.39	1.34	1.75	1.73	1.65
Vegetables (bags)	30,000	1.51	1.355	1.28	1.10	1.10	1.10	1.10	1.10	1.06	1.51	1.355	1.28
Cabbage, fresh (crates)	24,000	1.51	1.355	1.28	1.10[4]	1.10	1.10	1.10	1.10	1.06	.....	.....	.....
Class C	.....	1.80	1.76	1.73	1.65	1.58	1.425	1.35	1.35	1.17	1.80	1.76	1.73

[1] No storage in transit.
[2] Cars under 32 feet 9 inches.
[3] Cars 32 feet 9 inches and over.
[4] Does not apply to New York via Southern Pacific, Morgan, or Mallory steamship lines.

[fol. 491-7] A new rate on oranges of $1.55, minimum 36,000 pounds, was established on December 3, 1923, to the eastern transcontinental groups with the exception of points in the Southeast and New England, New York Harbor points, and destinations on the Erie. The $1.73 rate was continued to the excepted points and as an alternative to the other points, but the carload minimum in connection therewith was increased from 26,700 to 32,300 pounds. The principal reason for the reduced rate on oranges appears to have been the higher minimum, which permits a substantial saving in equipment and other economies. The $1.55 rate at the minimum of 36,000 pounds produces substantially the same revenue per car as the $1.73 rate at the minimum of 32,300 pounds. Based on the 36,000-pound minimum and an average haul of 2,545 miles, the $1.55 rate on oranges produces 12 mills per net-ton mile, 21.9 cents per car-mile, and $558 per car, as compared with corresponding earnings of 12 mills, 18.7 cents, and $534.97 on deciduous fruits, based on an average loading of 30,890 pounds and average hauls of 2,851 miles per car. The average loading of 30,890 pounds for deciduous fruits used in the foregoing computation is represented to be the average for the Southern Pacific. Based upon the average loading of 31,460 pounds for all roads in 1922, the earnings per car on deciduous fruits under the $1.73 rate would be $544.

It is urged that the movement of apples and lemons does not approach in volume that of deciduous fruits. That is true of apples from California; but there is a very large movement of apples from Washington and Oregon to the East, and the rate is the same as from California. Moreover, apples load more heavily than other deciduous fruits and are affected by different conditions. The last point will be discussed in connection with the issue of undue prejudice. In California Citrus League v. Director General, 58 I. C. C. 373, 396, the parties conceded that oranges and lemons should take the same rates under existing transportation conditions, and the rate of $1.44 then applicable on oranges, which became $1.73 to all of the groups except J under the general increases of 1920 and general reductions of 1922, was found just and reasonable.

It will be observed that the rates on fresh vegetables in packages, melons, and cantaloupes are considerably lower than those on deciduous fruits to Groups D to J, inclusive, although the carload minimum is lower than on deciduous fruits, but that there is not much difference between these rates to the farther distant groups. It is pointed out that the principal market for the fresh vegetables and one of the important markets for cantaloupes is in Group D, Chicago territory. But the average haul on deciduous fruits is considerably beyond Chicago. The classification ratings for [fol. 491-8] fresh fruits are generally higher than on fresh vegetables and melons. See Phœnix Chamber of Commerce v. Director General, 62 I. C. C. 368.

The class C rates were included in the foregoing comparisons because Class C rates, under exceptions to the western classification, generally apply on fresh fruits and vegetables in the territory west of Denver and El Paso, and such rates have been prescribed as reasonable for application in that territory in numerous cases. Complainant points out that the rates assailed are higher than the average of the class C rates to the various eastern groups. But they are as low as or lower than the class C rates to Groups A, B, and C, to which most of the traffic moves. Both complainant and defendants appear to regard the class C rates as inappropriate for application to this long-haul traffic.

Defendants compare the rates assailed with those on deciduous fruits from points in Washington, Oregon, Idaho, Utah, and Colorado to the same eastern destinations. The following are representative of these comparisons:

Deciduous fruits from—	To Denver, Colo.			To Omaha, Nebr.			To Chicago, Ill.		
	Distance Miles	Rate	Revenue per ton-mile Mills	Distance Miles	Rate	Revenue per ton-mile Mills	Distance Miles	Rate	Revenue per ton-mile Mills
California[1]	1,332	$1.62	24.3	1,732	$1.73	20.0	2,220	$1.73	15.5
Yakima, Wash	1,340	1.58	23.5	1,730	1.69	19.5	2,208	1.875	17.0
Hood River, Oreg	1,343	1.76	26.1	1,733	1.875	21.6	2,211	1.875	16.9
Twin Falls, Idaho	786	1.125	28.6	1,176	1.35	22.9	1,654	1.50	18.1
Provo, Utah	701	1.06	30.8	1,239	1.35	21.7	1,735	1.50	17.2
Grand Junction, Colo	450	.845	37.5	987	1.35	27.3	1,483	1.50	20.2

Deciduous fruits from—	To Pittsburgh, Pa.			To New York, N. Y.		
	Distance Miles	Rate	Revenue per ton-mile Mills	Distance Miles	Rate	Revenue per ton-mile Mills
California[1]	2,688	$1.73	13.5	3,160	$1.73	10.9
Yakima, Wash	2,676	1.875	14.0	3,187	1.875	11.7
Hood River, Oreg	2,679	1.875	14.0	3,190	1.875	11.7
Twin Falls, Idaho	2,122	1.875	17.6	2,633	1.875	14.2
Provo, Utah	2,024	1.73	17.0	2,540	1.73	13.6
Grand Junction, Colo	1,772	1.73	19.5	2,288	1.73	15.1

[1] Average distances from California based on 742 miles to Ogden, Utah.

There is a substantial shipment of various deciduous fruits from the foregoing districts to the eastern markets, but the volume of movement does not approach that from California. Attention is directed to the fact that the rate from the Utah and Colorado points to destinations east of Chicago is the same as the rate from California, although [fol. 491-9] the distances are from about 750 to about 1,000 miles less than from California. The rates from Washington, Oregon, and Idaho, or the bases thereof, have been found not unreasonable. State of Idaho ex rel. v. Director General, 58 I. C. C. 342; State of Washington ex rel. v. Director General, 58 I. C. C. 701; Wenatchee Valley Fruit Exchange v. N. P. Ry. Co., 83 I. C. C. 71.

Numerous comparisons are also submitted with the rates on grapes, peaches, and strawberries for shorter hauls from points in the East and South. Many of these comparisons are unaccompanied with information as to the movement. The carload minimum is generally only 20,000 pounds. The following are examples of the comparisons with rates from points from which a substantial movement is shown:

To—	Deciduous fruits from California			Peaches from Clarksville, Ark.		
	Distance [1]	Rate	Revenue per ton-mile	Distance	Rate	Revenue per ton-mile
	Miles		Mills	Miles		Mills
Denver, Colo	1,332	$1.62	24.3	.....	.....	.....
Omaha, Nebr	1,732	1.73	20	.....	.....	.....
Kansas City, Mo	1,972	1.73	17.5	417	$0.61	29.2
St. Louis, Mo	2,251	1.73	15.4	444	.67	30.1
Chicago, Ill	2,220	1.73	15.6	726	.835	20.3
Detroit, Mich	2,513	1.73	13.8	932	1.17	25.1
Cleveland, Ohio	2,577	1.73	13.4	980	1.185	24.1
Pittsburgh, Pa	2,688	1.73	12.9	1,057	1.285	24.3
New York, N. Y	3,160	1.73	10.9	1,497	1,915	25.5

To—	Peaches from Fort Valley, Ga.			Grapes from North East, Pa.		
	Distance	Rate	Revenue per ton-mile	Distance	Rate	Revenue per ton-mile
	Miles		Mills	Miles		Mills
Denver, Colo	.....	.....	.....	.....	.....	.....
Omaha, Nebr	.....	.....	.....	.....	.....	.....
Kansas City, Mo	1,086	$1.28	23.6	.....	.....	.....
St. Louis, Mo	807	.86	21.3	.....	.....	.....
Chicago, Ill	735	.98	26.6	450	$0.83	36.8
Detroit, Mich	.....	.....	.....	384	.685	35.6
Cleveland, Ohio	.....	.....	.....	101	.48	95
Pittsburgh, Pa	.....	.....	.....	175	.645	73.7
New York, N. Y	970	1.245	25.6	469	.745	31.7

[1] Average distance from California based on 742 miles to Ogden, Utah.

It is difficult to compare these rates because of the differences in length of haul and other conditions surrounding the transportation. Moreover, the rates from California are blanketed to a destination territory extending more than half across the country, while the other rates are more or less graded with respect to distance.

[fol. 491-10] General Level of Rates

The rates assailed are higher than the rates in effect on June 24, 1918, by 41 per cent to Group J and 50 per cent to the other groups. Complainant compares these percentages with the corresponding percentages of increases in the rates on other transcontinental traffic and certain traffic within mountain-Pacific territory. The average increases in the rates of November 15, 1923, over those of June 24, 1918, are shown as 30 per cent in the case of other eastbound transcontinental traffic and 31 per cent in the westbound transcontinental rates. The average increase in the westbound rates on paper and paper articles was 23 per cent and on iron and steel articles 33 per cent. From some of the interior groups from which certain traffic actually moves the increases were less than from Group A, from which such traffic does not move. For example, the increases on agricultural implements averaged about 20 per cent from Groups B to F, inclusive, as compared with 50 per cent from Group A. Subsequent to the compilation of these figures the westbound rates on many iron and steel articles from Groups B and C were reduced an average of 15 per cent. Moreover, the carriers now have pending a fourth-section application for authority to publish reduced rates on numerous commodities from Groups C to J, inclusive, to California terminals lower than to intermediate points. These reduced rates would average 6.5 per cent lower than the corresponding rates of June 24, 1918. Import rates from California and other Pacific coast ports to the East on November 15, 1923, averaged 42 per cent higher than on June 24, 1918, and the export rates in the reverse direction represented a corresponding increase of 20 per cent. Rates over the Southern Pacific rail-and-water route on various commodities from California terminals to New York averaged 1.2 per cent lower on Novem-

ber 15, 1923, than on June 24, 1918. Many of the reduced rates on transcontinental traffic were accompanied by increases in the minimum weights, but this was not so in all instances.

It is further shown that the rates of November 15, 1923, on coal from New Castle, Colo., Castle Gate, Utah, and Rock Springs, Wyo., to San Francisco, Sacramento, and Fresno ranged from 18 per cent lower to 13 per cent higher than those of June 24, 1918; the corresponding increases in the rates on livestock from certain points in Nevada and Utah to Oakland averaged 20 per cent in the case of cattle and 33 per cent on hogs and sheep; the average increase in the rates on livestock from certain points in Oregon to San Francisco was 17 per cent in the case of cattle and 20 per cent on sheep and hogs; the rates on ore and concentrates from and to numerous points in mountain-Pacific territory increased an average of 24 per cent; the rates [fol. 491-11] proposed by the carriers in their fourth-section applications on numerous commodities between San Francisco and north Pacific coast ports average 15 per cent higher than those of June 24, 1918; and the class rates between San Francisco, Los Angeles, and Sacramento, on the one hand, and certain points in California, Nevada, and Utah, on the other, represent an average increase of 24 per cent.

In view of the foregoing comparisons, complainant contends that the rates on deciduous fruits should not exceed the rates of June 24, 1918, by more than 25 per cent, which would result in a rate of $1.44. One of the principal traffic witnesses for defendants testified that the transcontinental rates used in complainant's comparisons were fairly representative of the traffic actually moving in substantial volume. But he further testified that such rates were established because of competition with the water lines operating through the Panama Canal or to preserve the carriers' tonnage. The canal competition has increased rapidly during the last few years. Deciduous fruits have never moved by water, one experimental shipment several years ago having been a failure. It was stated at the hearing that plans were under way to procure refrigerator ships which would be capable of transporting such fruits to the Atlantic ports.

The applications for fourth-section relief respecting the rates between San Francisco and north Pacific coast ports are based on water competition. The rates on coal to San Francisco are influenced by competition with water-borne coal and fuel oil. See Western Coal Rates, 89 I. C. C. 383, 450. The rates on coal, livestock, and other commodities were increased by flat or maximum amounts per unit under General Order No. 28, resulting in increases of less than 25 per cent in many instances, but a much larger percentage on shorter hauls. Rates in mountain-Pacific territory were increased 25 per cent as compared with 33-1/3 per cent in the interterritorial rates under the general increases of 1920. As to most of the rates referred to by complainant in mountain-Pacific territory, there is a lack of definite information regarding the movement thereunder.

Defendants show that the transcontinental rates on many commodities, both eastbound and westbound, were 50 per cent or more higher at the time of the hearing in December, 1923, than on June, 24, 1918, but these rates were selected without regard to the movement, and it is admitted that there is no movement under some of them.

Generally speaking, it is clear that the circumstances and conditions affecting the rates used in complainant's comparisons, wherein the increases are considerably less than 50 per cent, the approximate increase in the rates in issue, [fol. 491-12] are substantially different from those surrounding the latter.

Relation of Rates to Prices

The prices received for the fruit were relatively high during the war and one or two years following it, the peak being reached in 1919 to 1920, but since then prices have declined to the lowest point since 1917. For example, the farm value of table grapes is shown as $52 per ton in 1922 as compared with $75 in the three preceding years; of peaches as $45 per ton in 1922 as compared with $76 in 1920; and of both pears and plums as $50 per ton in 1922 as compared with $90 in 1920. The farm values of the various fruits during the years from 1919 to 1922, together with the tonnage produced, are shown in Table II of the appendix; and Table III thereof shows the average prices received in eastern markets from 1917 to 1923. The tables

are from an exhibit. It will be noted from the second table that the average prices received for the principal fruits increased from $4.85 per 100 pounds in 1917 to $6.17 in 1918, $7.08 in 1919, reached the peak at $8.84 in 1920, and then declined to $6.90 in 1921; $5.95 in 1922, and $5.44 in 1923.

Complainant compares the relation of the charges for transportation and refrigeration to the average market prices received in eastern markets during the years from 1920 to 1923. On table grapes the relationship of these charges to the average market price increased from 27 per cent in 1920 to 37 per cent in 1921 and 1922 and 40 per cent in 1923; on wine grapes it increased from 24 per cent in 1920 to 30 per cent in 1921, 31 per cent in 1922, and 40 per cent in 1923; and on plums it increased from 25 per cent in 1920 to 33 per cent in 1921, 38 per cent in 1922, and 39 per cent in 1923. On peaches, however, the relationship of 40 per cent in 1923 was lower than in any other year since 1920, including that year, and on pears the relationship of 34 per cent in 1923 was lower than in 1922 and the same as in 1921, but higher than in 1920. The average relationship on all of the principal deciduous fruits was 26 per cent in 1920, 34 per cent in 1921, 36 per cent in 1922, and 39 per cent in 1923.

Comparison is also made of the relationship of the total of the charges for transportation and refrigeration and the loading and selling costs to the average market prices during the same years. The loading costs were the same each year, but the selling costs varied with the prices. The relationship of all these expenses to the average market prices of the principal fruits increased from 34 per cent in 1920 to 43 per cent in 1921, 44 per cent in 1922, and 48 per cent in 1923.

[fol. 491-13] The foregoing comparisons are made without any allowance for the weight of the boxes, crates, or other containers. Similar comparisons are made on a net basis, that is, excluding containers, which has the effect of increasing the percentage relationships by 1 or 2 per cent in many instances.

Complainant contends that the charges now constitute an undue proportion of the prices received for the fruit. Reference is made to the fact that the freight charges on

livestock average but one-twentieth of the market price, and on grain the charges are said to average 15 per cent of the price received. But the average hauls of these commodities are very much less than of the traffic under consideration, and, of course, there are no refrigeration charges. It is natural that the percentage relationship of the total charges to the market prices should be higher on this extremely long-haul traffic moving under refrigeration.

Economic Need of Industry

The growers and shippers were not greatly concerned about the level of the rates in 1919 and 1920, but they assert that they can no longer bear the transportation burden under present prices, and that they do not expect any material increase in such prices. They have endeavored to reduce their costs as much as possible, but the record indicates that the cost of production is still considerably higher than before the war, and that the industry is in economic distress. The charges for transportation and refrigeration constitute the largest item of expense in producing and marketing the fruit.

Considerable evidence regarding production costs was introduced by witnesses who had kept records, and these costs are compared with the prices received. One witness showed the average cost of producing table grapes in 1923 in a large vineyard, which is more economically managed than the average, as $36.98 per ton, including depreciation and interest on the investment at 6 per cent. The net returns to the growers in 1923 are shown to have averaged $26.67 per ton, or $10.31 less than this cost of production. On this basis the total loss to the grape growers on about half of the 1923 crop is figured at $1,432,162.10. As the prices received for the products of this vineyard averaged about $10 to $12 per ton higher than the average prices received by all the growers, it would appear that the particular vineyard did not suffer any loss, but earned approximately 6 per cent.

Another witness compared the costs of production, including interest and depreciation, on his muscat-grape vineyard, which is very favorably situated and requires no

irrigation or fertilization, with the average returns on the [fol. 491-14] basis of various assumed yields per acre in the years from 1918 to 1923. As this vineyard produced 10 tons per acre in 1923 as compared with an average of about 4 tons throughout the State, it yielded a profit in that year of $17.36 per acre over and above the cost of production, but vineyards producing 5.5 tons per acre would have lost $59.61 per acre, those producing 3.75 tons would have lost $89.57, and those producing 2.75 tons would have lost $100.69, upon basis of equal costs.

Other evidence was introduced regarding the costs of production as compared with the net returns, but it is impracticable to refer to all of the evidence in detail. It is sufficient to say that it indicates that a great many, if not most, growers received less than the cost of production in 1922 and 1923, in many cases even without considering interest on the investment.

The evidence shows that on many sales the returns were insufficient to pay the expense of loading, transporting, and selling the fruit, and the grower had to bear part of that expense besides receiving nothing for producing the fruit. Such returns, referred to as red-ink returns, were received on 31 sales out of a total of 181 sales made in 1923 by one large grower of grapes, plums, and peaches.

The returns appear to have been particularly bad on certain varieties of plums, poor returns were also received on some varieties of peaches and table grapes, and in general the returns are regarded as very low, except that pears appear to have brought a fair return. With the exception of pears and some varieties of peaches, the returns were generally lower in 1923 than in 1922. In some sections considerable fruit was left unpicked because prices would not justify the expense of getting it to market.

The low prices received in 1922 and 1923 are attributed to general economic conditions in the East or the law of supply and demand. Shortage of cars when the fruit was at its prime, unfortunate experiments in certain fruits in 1922, the prevalence of mildew on grapes in 1923, and other conditions affecting the fruit may have contributed in some degree to the unfavorable results.

The year 1923 is described as the most disastrous in the history of the industry. The growers were worse off finan-

cially at the close of that season than at the end of the previous one, many growers were more in debt than ever before, more growers had to borrow money to pay taxes and other expenses, more difficulty was encountered in securing loans, owners were unable to secure tenants even on more liberal terms, and there was no sale for land. Some vineyards have already been abandoned, and it is predicted that there will be a decrease in production and therefore in the carriers' tonnage unless relief is secured.

[fol. 491-15] Assuming that the reduced rate would not be reflected in reduced selling prices, the reduction here sought, amounting to 29 cents per 100 pounds or $5.80 per ton on the bulk of the traffic, would afford substantial relief to the growers, who bear probably the major portion of charges directly or indirectly, and would mean the difference between a loss and a small profit to many of them. But it is agreed that other reductions must be secured in the costs of producing and marketing the fruit in order to place the industry in a prosperous condition.

Complainant cites National Live Stock Shippers' League v. A., T. & S. F. Ry. Co., 63 I. C. C. 107, and Rates on Grain, Grain Products, and Hay, 64 I. C. C. 85, in support of its position that rates upon basic commodities, particularly upon products of the soil, must be responsive to the needs of industry and commerce. It is contended that the economic needs of this industry require the relief sought.

Financial Condition of Carriers

Complainant introduced figures to show that the operating returns of most of the principal carriers engaged in handling this traffic have increased in a marked degree during the last few years. The following table, extracted from one of complainant's exhibits, compares the net operating incomes of 10 of the principal carriers in 1923, estimated on the basis of eight months' operation, with the average net incomes of the same carriers during the nine-year period commencing in 1914, and it also shows how much the increases in estimated income in 1923 over the nine-year average exceeded the amounts necessary to pay interest at 6 per cent on the corresponding increases in investment in road and equipment:

	Average for nine years	1923 estimate	Increase in 1923 over average	Net increase in excess of interest on increase in investment
Southern Pacific	$34,349,974	$49,715,000	$14,865,026	$9,717,158
Santa Fe	37,067,941	47,109,000	10,041,059	8,142,792
Western Pacific	2,035,394	3,555,000	529,606	[1] 111,219
Union Pacific	27,190,791	27,575,000	384,209	[1] 3,266,998
North Western	15,275,182	12,489,000	[1] 2,786,182	[1] 7,482,309
Milwaukee	13,560,672	19,575,000	6,014,328	1,092,766
Pennsylvania	34,908,553	78,047,000	43,138,447	28,641,840
New York Central	42,881,453	85,286,000	42,404,547	32,088,256
Erie	4,564,759	13,495,000	8,930,241	6,956,506
Baltimore & Ohio	16,540,143	46,050,000	29,509,857	21,954,733

[1] Decrease.

The California Railroad Commission shows that the Southern Pacific (Pacific system) increased its net railway operating income from $33,686,561 in 1921 to $40,459,532 in 1922, and the estimated income for 1923, based in nine [fol. 491-16] months' operation, was $43,092,216. The increase in 1923 over 1921 was $9,405,655, or about 28 per cent. Likewise the Santa Fe, after allowing for an item of excess maintenance in 1920 which was required to be canceled in 1921, increased its net railway operating income from $34,199,881 in 1921 to $35,509,010 in 1922, and the estimated income for 1923, based on nine months' operation, was $39,207,648. The increase in 1923 over 1921 was $5,007,767, or about 15 per cent. The Western Pacific also increased its net operating income from $951,893 in 1921 to $1,996,776 in 1922, and its estimated income for 1923, based on nine months' operation, was $2,668,231, an increase over 1921 of $1,716,338, or about 180 per cent.

The witnesses for complainant and the California commission used different methods in estimating the income for 1923. The actual returns now available for 1923, by agreement to be considered as in the record, show that the net railway operating income of the Southern Pacific (Pacific system) was $45,412,504, of the Santa Fe $40,815,194, and of the Western Pacific $3,068,401. These figures are somewhat higher than the estimates of the witness for the California commission, but they are considerably lower than the estimates of complainant's witness.

It is further shown that the operating ratios of some of the principal carriers have materially improved since 1920. For example, the ratio of the Southern Pacific was reduced from 83.32 per cent in 1920 to 68.96 in 1923, based on nine

months' operation in the latter year; and that of the Santa Fe was likewise reduced from 86.89 to 73.46 per cent; but that of the Western Pacific increased from 75.84 to 77.72 per cent, although the latter figure was lower than in 1921 and 1922.

But despite the improvement in operating returns, defendants show that the rates of return on the investment claimed by some of the principal carriers for 1922 and 1923, based on nine months' operation in the latter year, were as follows:

	1922 Per cent	1923 Per cent		1922 Per cent	1923 Per cent
Southern Pacific lines.	4.13	4.41	Illinois Central system	5.32	4.95
Santa Fe system	4.66	5.01	Erie system	.14	3.71
Western Pacific	1.95	2.6	Pennsylvania system	3.65	3.97
Union Pacific system.	4.14	4.11	Baltimore & Ohio	3.21	6.08
North Western	3.64	2.17	New York Central lines	4.59	6.9
Milwaukee	1.87	2.66			

It will be noted that the Baltimore & Ohio and New York Central are the only carriers shown as earning in excess of 5.75 per cent in 1923. Defendants further show that the rate of return for the nine months ending September 30, [fol. 491-17] 1923, averaged but 4.35 per cent per annum in the western district and 5.27 per cent in the entire country. These figures are based on valuations which bear the same prcentage relationship to book values as the tentative valuations used in Increased Rates, 1920, 58 I. C. C. 220, bore the book values.

As previously indicated, a substantial portion of the traffic under consideration originates on independent short lines. Some of these short lines are in very poor financial condition, and the reduction sought would seriously affect their revenues under existing percentage divisions.

The record in this case does not indicate that the carriers principally engaged in handling this traffic as a whole are earning in excess of, or even as much as, a fair return of 5.75 per cent.

Cost of Service

Defendants select eight carriers in the western district—the Southern Pacific, Santa Fe, Western Pacific, Union Pacific, Denver & Rio Grande Western, Missouri Pacific,

North Western, and Milwaukee—and four carriers in the eastern district—the Erie, Pennsylvania, Baltimore & Ohio, and New York Central. From the total operating expenses, tax accruals, and certain other expenses for 1922 of these lines in the eastern and western districts, respectively, they deduct expenses not related to train operations and separate the remaining expenses between passenger and freight traffic. The freight expenses thus ascertained for each group of carriers are then divided by the gross-ton miles of revenue and nonrevenue freight handled by them, resulting in an average of 3.9825393 mills per gross-ton mile in the western district and 4.3910446 mills in the eastern district. The gross tons per car of the traffic under consideration are next determined by adding together the average revenue tons, the nonrevenue tons, the tare tons, and the proportional of empty haul, resulting in 60.22 tons per car in the western district and 58.88 tons in the eastern district. Finally, the average costs per gross-ton mile are applied to the average gross tons per car and the distances from and to representative points to get the average costs per car, and the costs per 100 pounds are also computed. The final result, for example, from Lodi, is an average of $1.73 per 100 pounds to Chicago, $2.13 to Pittsburgh, and $2.58 to New York.

Defendants do not contend that the above figures represent the actual cost of handling this traffic, which it is said would be impracticable of ascertainment, but they are shown as the average costs of handling all traffic applied to the weights and distances of this traffic, and it is asserted [fol. 491-18] that they come as near as possible to approximating the actual costs. It is contended that the longer haul on this traffic than the average on all traffic is offset by the expedited service and other expenses peculiar to this traffic.

Complainant points out that the average costs shown per gross-ton mile are approximately 10 per cent higher on the eastern lines than on the western lines, notwithstanding the greater operating difficulties in the West. The average hauls on all traffic in 1922 were 155.6 miles in the eastern district, 219.98 miles in the western district, and 186.46 miles for the entire country by individual lines, the average for all lines as one system being 325 miles. The

average haul of the traffic under consideration, 2,860 miles, is greater than that of almost any other traffic moving in substantial volume anywhere in the country. It is pointed out that the application of the average costs of handling all traffic for 220 miles to the handling of this traffic for a distance of 2,200 miles would burden it with the cost of 20 terminal services. The average costs of handling all traffic include less-than-carload traffic, which is much more expensive than carload traffic, and traffic on numerous branch lines of light traffic density, many of which handle little, if any, of this traffic. An insignificant proportion of the traffic moves over the Denver & Rio Grande Western and the Missouri Pacific. The application of defendant's cost figures would indicate that they are not only losing money on the bulk of the traffic under consideration, but it would appear that they are also losing heavily on most of the other carload traffic handled by them in large volume from California to the East. This is regarded by complainant as absurd, because the western carriers enjoy their best net operating returns while this and other traffic is moving east in heaviest volume.

The average costs of handling all traffic as applied to the traffic under consideration, in the manner followed by defendants, reflect the factors of average loading and empty-car haul. These factors are influenced by the type of equipment used, that is, refrigerator cars. Such cars are considerably heavier in proportion to their loading capacity than box cars. But the defendants' comparisons fail to take into consideration the ice in the bunkers of refrigerator cars, for the transportation of which the carriers receive an allowance in their refrigeration charges. Many commodities may not be loaded in refrigerator cars for various reasons, and although the loading of this equipment is not confined to perishable traffic, there is often no suitable loading available for refrigerator cars from the East when such cars are needed in California. The empty movement is shown by one of defendants' witnesses to be 67.7 per cent of the loaded movement of refrigerator [fol. 491-19] cars in this traffic, as compared with an average of a little over 50 per cent for all equipment in the western district during the first eight months of 1923. Other witnesses for defendants showed a somewhat higher

percentage of empty haul for refrigerator cars in this traffic. However, the empty haul of tank cars and in some cases of stock cars and open-top cars appears to be as great or even greater than that of refrigerator cars. The empty refrigerator cars are returned from the East to California in solid trains moving on fast schedule, when the demand for such cars is great for eastbound loading; and they must often be stored, sometimes at points rather remote from the loading points, awaiting the time when they will be needed for loading. Empty box cars and other equipment are also moved in solid trains at certain times to points where needed, and they are sometimes stored awaiting the season of movement. Increase in the shipment of various kinds of perishable traffic from California to the East during recent years appears to have increased the percentage of empty westbound movement of refrigerator cars, but there is more constant use for them throughout the year for eastbound traffic. The figures for the westbound empty movement include new refrigerator cars, a great many of which have been purchased in the East during the last few years.

The expedited service is stressed by defendants as increasing their expenses for handling this traffic as compared with other freight. The schedule for deciduous fruit from Roseville to Chicago averages 13.95 miles per hour as compared with 11.35 and 12 miles per hour for citrus fruit and manifest freight, respectively, or 23 and 16 per cent faster for the deciduous fruit. The schedules for fresh vegetables and cantaloupes from the Imperial Valley, however, are about as fast or faster than for deciduous fruit. The schedule for deciduous fruit was increased during Federal control from 138 to 180 hours, Roseville to Chicago, and it was reduced to 154 hours in 1921. Similar changes were made in the schedule to New York, which contemplated third-morning delivery from Chicago prior to 1918, when it was increased to fifth morning from Chicago, and it is now fourth morning. The schedule of the Santa Fe was formerly faster than that of the Southern Pacific and Western Pacific, while the Salt Lake's schedule was slower than the latter lines, but the schedules of all these lines are now the same in number of hours from the assembling points to Chicago.

The schedules maintained on deciduous fruit necessitate a reduction in the tonnage per train from the maximum rating of the locomotives. On the Santa Fe this reduction is said to be about 15 per cent. A comparison of the operating efficiency secured in the handling of respective [fol. 491-20] trains by the Southern Pacific shows that the gross tonnage of the fruit trains averaged 84.2 per cent of the locomotive capacity, while the averages of the manifest and other through freight trains were 86.8 and 89 per cent, respectively. The corresponding ratios based on the net load instead of the gross weight of the train were only 33.8 per cent for the fruit trains, 48.2 per cent for the manifest trains, and 51.5 for the other through trains. According to the same exhibit, the net weight of the freight transported per gallon of fuel oil consumed was only 14.9 tons in the case of the fruit trains as compared with 22.3 and 22.4 tons for the manifest and other through trains, respectively. This was due largely to the lighter weight of the fruit in proportion to the gross weight of the train. To what extent this comparison might be affected by considering the ice in the bunkers is not apparent from the record.

The lines that handle the fruit from Council Bluffs Transfer to Chicago, 488 miles, maintain a schedule of 31 hours, which is figured from the time they have 10 or more cars in their possession. This is compared with what is termed a normal schedule of 40 hours on the North Western and the Milwaukee's average elapsed time of approximately 72 hours for common freight. But the schedule for this run on fresh meat is faster than for deciduous fruit, and the North Western's schedule for livestock is 36 hours. The Milwaukee's locomotive rating for California fruit is 2,100 tons, which is 75 per cent of its rating of 2,800 tons for common freight. In September, 1923, the North Western handled 184 fruit trains with an average of 1,328 tons of fruit and an average total of 2,030 tons of fruit and fill-out of other freight, or 220 tons less than its time-freight rating of 2,250 tons and 720 tons less than its full locomotive rating of 2,750 tons. These tonnage figures do not include ice in the bunkers.

On the Pennsylvania the traffic is handled in trains with other perishable freight. Their average speed is about

15 miles per hour as compared with 8 to 10 miles per hour for what are referred to as "drag" trains. But the service maintained on merchandise or time-card freight appears to approximate more closely that on perishable traffic. The faster service on perishable traffic necessitates a reduction in the tonnage of 20 to 30 per cent, sometimes even 50 per cent, below that of "drags." This is said to make the service from 20 to 30 per cent more expensive, but no explanation was made as to how these figures were determined.

In connection with the carriers' showing as to reduced loadings due to the desire for increased speed, it may be observed that locomotive efficiency is property measured by [fol. 491-21] ton miles per hour. For example from a purely transportation standpoint, the movement of 1,000 tons at 15 miles per hour is equivalent to the movement of 1,500 tons at 10 miles per hour. This takes no account of operating factors, such as comparative efficiency of fuel at varying speeds, or for certain other factors affecting final costs.

The necessity of icing and re-icing shipments is referred to as increasing the cost of the service. The trains must be stopped for re-icing at seven points on the Santa Fe and at eight points on the routes via Ogden to Chicago. The icing stations on the Southern Pacific and Union Pacific are equipped with so-called island platforms at which a train of 55 cars can be iced in about one hour. It requires about an hour and a half to ice a train at each of the icing stations on the Santa Fe. There are two icing stations on the Erie between Chicago and New York besides those at or in the vicinity of the cities named. Some of the lines assert that the ice costs them more than they receive for furnishing it, but that does not appear to be a matter for consideration in this case.

Diversions and reconsignments are referred to by defendants as an item of large expense in the handling of this traffic. The carriers maintain an elaborate system for the performance of this service. On the Santa Fe the total diversions, including multiple diversions of the same shipments, during the first nine months of 1923, were 8,396 on 10,220 shipments of grapes, or 82 per cent, and 1,709 on 2,182 shipments of deciduous tree fruits, or 78 per cent. On the other origin trunk lines, from July 1 to December 31,

1922, 16,022 reconsignments outside of switching limits were performed on 26,857 shipments of grapes, or 60 per cent, and 5,485 reconsignments on 9,977 shipments of other deciduous fruits, 55 per cent. The reconsignments on apples during the same periods were only 57 on 144 shipments over the Santa Fe, or 40 per cent, and 380 on 2,455 shipments over the other lines, or 15 per cent; but the reconsignments on citrus fruit were 17,148 on 22,573 shipments over the Santa Fe, or 76 per cent, and 6,007 on 8,817 shipments over the other lines, or 68 per cent. No charge is made for diversions or reconsignments west of Chicago, and it is estimated that 80 per cent of them are performed in that territory. The number of reconsignments in proportion to the shipments of deciduous fruit appears to have been considerably greater in 1923 than in previous years. This is attributed by complainant mainly to embargoes of large eastern markets in connection with the permit system. Under this system shipments could not be consigned to the embargoed destinations, but permits were issued to reconsign to such points after the shipments had been started to other destinations.

[fol. 491-22] The loss and damage claim payments by the four origin trunk lines during the year 1922 were 4.5 per cent of the total freight revenue on grapes during 1921, the revenue for the latter year being used because the claim payments in 1922 were largely on shipments in 1921. The corresponding percentages were 3.8 per cent for other deciduous fruits, 3.28 per cent for apples, and 1.3 per cent for citrus fruit. The claim payments of the Santa Fe on all freight averaged about 2 per cent of the total freight revenue in 1920-1921, but they have since dropped to about 1 per cent.

The cost of hauling empty refrigerator cars from Roseville to storage points on the Southern Pacific and their return to Roseville or points of interchange with connecting carriers is estimated as $4.30 per car, based on a study of 2,394 cars moved in three or four weeks preceding August 21, 1923. The Southern Pacific's storage facilities at Roseville are insufficient during the short time during which they are needed, and this study was made for the purpose of considering an increase in such facilities, which question had not been decided at the time of the hearing.

Both the Southern Pacific and Santa Fe maintain special trains to assemble loaded cars and distribute empties during the season of heavy movement of deciduous fruit. Comparison of certain fruit pick-up and hauling trains with local-freight trains of the Southern Pacific indicates that the wage costs of the former averaged 66.4 cents per 100 net-ton miles as compared with 33.9 cents for the latter. The difference was due to the greater net tonnage per train-hour for the local-freight trains. In the case of one fruit train, engaged more in hauling than pick-up service, the conditions were reversed and its wage costs were considerably lower than those for the local-freight train with which it was compared. The cost of gathering up carload shipments of perishable freight and distributing empty refrigerator cars on the Valley division of the Santa Fe to and from Bakersfield, during the months of July, August, September and October, 1922, is estimated to have averaged $29.42 per loaded car. This cost was affected by the shopmen's strike during that period, but conditions are said to have been practically normal in October, during which the average cost is estimated as $25.96 per car.

Defendants introduced considerable evidence regarding the mountain grades and curves, trouble in securing water for their engines in desert places, cloudbursts and washouts at some seasons of the year, and various other operating difficulties encountered on the western lines. The grades and some of the other operating conditions on the Erie are also detailed. These conditions on the various lines require lightening of the tonnage of trains at some places, increases [fol. 491-23] at others, and at certain places helper service is required. Other traffic moving over these lines is affected by the same conditions.

The size, complexity, and high value of the Chicago terminal facilities are referred to by defendants. Of course, those facilities are not confined to this traffic. The delivery of grapes on team tracks at Chicago has been surrounded with so much delay, congestion, and confusion that the Chicago, Rock Island & Pacific once considered injunction proceedings to keep its tracks clear. It is suggested by complainant that the carriers could keep their terminals clear by means of track-storage charges. Deliveries to connect-

ing lines at Chicago are made under conditions that often require frequent deliveries in small lots.

A study of the cost of handling California fruit over the Erie purports to show a cost of $181.37 per car from Chicago to New York, $152.37 per car from Chicago to Jersey City, and $107.93 per car from the Buffalo gateway to New York, exclusive of loss and damage payments. This study is based on an analysis of the expense of handling all freight traffic, in road-haul and yard services separately, on the divisions over which this traffic moves. It includes the expense of local-train service and the service on numerous branch lines of light traffic density. It includes the return of the empty cars and assumes that the wear and tear on the roadway and certain other expenses are as great for hauling the empties as the loaded cars. The mileage paid for the use of the refrigerator cars is charged to the traffic, but it is not credited with the fact that the Erie is relieved of furnishing its own cars.

The bulk of the traffic to New York is floated from Jersey City to the Erie's Duane Street station, where the fruit auctions are located. Where shipments moving over the Pennsylvania are floated by the Erie to Duane Street, the latter receives $40 per car for that service. The Duane Street station handled 36,404 carloads of western fruit and vegetables in 1922. Additional pier facilities had to be rented by the Erie in 1923, for the use of which a charge was made against the traffic.

Terminal facilities at New York and other important eastern markets, such as Pittsburgh, Philadelphia, and Boston, have been inadequate to handle the traffic at the height of the grape season, and embargoes have been declared against such shipments. The congestion was apparently caused to some extent by peddling or vending of fruit from the cars on public delivery tracks. The establishment of track-storage charges at Boston so improved the situation there that the embargo was canceled.

[fol. 491-24] Increases in the wages of employees, cost of materials, and tax accruals during recent years are referred to by defendants. The average increase in wages on 18 lines in the western district and 5 lines in the eastern district, from 1915 to 1922, is shown as 123.4 per cent. The increases shown in the cost of various materials during the

same period ranged up to 411 per cent. The average increase in the cost of the principal materials purchased by the Santa Fe is shown as 85.6 per cent in 1922 and 100.75 per cent in 1923 over the average for 1914 and 1916. Tax accruals are shown to have increased an average of 217.6 per cent on the 23 lines above referred to from 1910 to 1922.

There have been some reductions in wages and prices of materials since 1920. Apparently the greatest saving has been on fuel oil, which is burned in the locomotives by the Southern Pacific as far east as Ogden and El Paso and by the Santa Fe as far east as Winslow, Ariz. The prices of the Standard Oil Company for this commodity declined from $1.85 and $2 per barrel in July, 1920, to 75 cents and $1 per barrel in 1923. The aggregate annual saving of the four origin trunk lines in their fuel-oil costs in 1923 as compared with 1920 is figured at over $15,000,000. The record does not indicate whether the level of prices for fuel oil in 1923 can be considered permanent; and it does not appear whether the total fuel costs of all the principal carriers were less in 1923 than previous years.

Defendants' evidence regarding the cost of the service can not be accepted as showing the actual cost of the through transportation of this traffic with any degree of accuracy, and the conclusions hereinafter reached are based mainly upon other considerations. This evidence, however, does show that the service is more expensive than that on all traffic or on apples or citrus fruit.

Evidence of Eastern Grape Growers

The Chautauqua-Erie grape belt in western New York and north-western Pennsylvania is the country's next most important grape producing section after California. In this belt there are about 3,000 growers, having about 40,000 acres of Concord grapes, which cost approximately $14,000,000 to bring into bearing. The annual production of this district during the period from 1900 to 1922 averaged 5,744 carloads of 10 tons each.

Interveners representing growers and shippers in the Chautauqua-Erie belt oppose any reduction in the rates on grapes from California. Their grapes compete with California grapes in the eastern markets. The eastern grapes

generally move in refrigerator cars, and their average loading is about 22,200 pounds per car. Interveners show that [fol. 491-25]their transportation costs per car-mile to some of the most important eastern markets range from 107 to 484 per cent higher than the like costs under the present rates and minimum weight from California. The weakness in this comparison is that the distances from California are very much greater, and the record affords no measure for determining how much greater the car-mile earnings might properly be from the Chautauqua-Erie belt.

The production in the Chautauqua-Erie belt has fluctuated considerably from year to year, but it did not show any increase from 1900 to 1922. In fact, the production in 1922 was less than in 1900, 1911, or 1914, and the production in the latter year exceeded any subsequent year up to 1922. In the meantime, the shipment of grapes from California to the East has increased tremendously, and interveners assert that California grapes are fast monopolizing the eastern markets. The heavy movement of grapes from California is said so to congest the large eastern markets as to cause embargoes, which hurt the eastern growers. The carload shipments from the Chautauqua-Erie belt in 1923 are shown to have decreased under the number in 1922 by 28 per cent to Philadelphia, 33.5 per cent to Pittsburgh, 41 per cent to Newark, 49 per cent to Boston, 57 per cent to New York City, 80 per cent to Cleveland, and 89 per cent to Chicago. The decline in shipments to these points is attributed to embargoes caused chiefly by the increased shipment of California grapes. The congestion can not be attributed solely to the California grapes, as there is a substantial production and shipment of grapes from Michigan and eastern states other than New York and Pennsylvania.

The cost of production on a 10-acre vineyard in the Chautauqua-Erie belt in 1923 is shown at $104.58 per acre, including 6 per cent interest on the investment, while the net returns to the growers are said to have averaged $62 per ton in 1922 and 1923. As the average production is slightly less than 1.5 tons per acre, it is figured that the growers lost an average of about $10 per acre, or a total of about $400,000 in each of the two years. Interveners assert that their production costs will permit no reduction in present prices and

that a reduction in the rates from California would place the eastern growers in a precarious position. Complainant does not appear to contemplate that a reduction in the rates would result in lower prices in the eastern markets.

The average yield of grapes per vine in 1920 is shown as 4.97 pounds in New York as compared with 13.418 pounds in California, and the average yield per acre in the Chautauqua-Erie belt is considerably less than in California. The soil in the Chautauqua-Erie belt is said not to be adapted to raising other crops.

[fol. 491-26] California is entitled to the benefit of its natural advantages of climate and other conditions favorable to the growing of grapes and other deciduous fruits. The evidence of the eastern grape growers is addressed to the proposition that California is not being deprived of any of those advantages by the present rates.

Undue Prejudice

Complainant contends that the rate of $1.50 on apples compared with the rate of $1.73 on other deciduous fruits to most of the eastern groups results in undue prejudice and preference as between the shippers of the respective fruits. Under these rates the average earnings are 12 mills per net-ton mile on the deciduous fruits as compared with corresponding earnings of approximately 10 mills on apples, based on average distances. The weight-average haul on apples shipped from California in 1922 was 3,008 miles, which slightly exceeded that on grapes, exceeded the average on the deciduous tree fruits by 257 miles, and exceeded the combined average on grapes and other deciduous fruits by 148 miles. The movement of apples from California to the East, which amounted to 1,240 carloads in 1922, is very small in comparison with the total movement of deciduous fruits, but there is a very large movement of apples from Washington and Oregon at the same rate as applies from California. Apples are said to compete with other deciduous fruits in eastern markets, but it would appear that the competition between different fruits is limited. California apples and some of the other deciduous fruits enter the eastern markets at the same time to some extent.

The lower rate on apples is defended by the apple growers as well as by the defendants on the following grounds: (1) It has always been lower than on other deciduous fruits; (2) apples meet with greater local competition, because they are produced almost everywhere in the East; (3) the claim payments are not as great on apples; (4) apples load more heavily; and (5) they are subject to water competition.

The fact that the rate on apples has always been lower than the rate on the other deciduous fruits is no justification for continuing such an adjustment if it is improper. It is doubtful whether apples meet with much greater local competition than some of the other deciduous fruits, such as grapes, peaches, and pears, which are also produced rather generally throughout the East. The matter of claim payments, which was referred to in considering the cost of service, does not appear to be of sufficient importance to justify much difference in the rates. But apples do load more heavily than the average of the other deciduous fruits, [fol. 491-27] and this is a matter of considerable importance. The carload minima on apples are 31,000 and 35,000 pounds, depending on the size of the car, compared with 26,000 pounds on other deciduous fruits. The average loading of apples shipped from California in 1922 was about 37,400 pounds per car as compared with an average of 31,460 pounds for the other deciduous fruits. On the basis of these average weights the apple rate of $1.50 produces a revenue of $561 per car and the rate of $1.73 on the other deciduous fruits yields $544 per car. The fact that apples have been and are successfully shipped by water through the Panama Canal is another feature which distinguishes them from the other deciduous fruits. There appears to be a considerable movement of apples from the north Pacific coast through the canal, and the record indicates that this water competition affects the all-rail rate from that territory. If the rate on apples from California were increased to $1.73, it would place the shippers of California apples at a disadvantage in competing with those from the north-coast territory, and it is doubtful whether it would be of any substantial benefit to the shippers of other deciduous fruits. Some of complainant's members are opposed to any increase in the apple rate.

The complaint contains an allegation that the maintenance of rates on deciduous fruits which exceed the rates in effect prior to June 25, 1918, by greater percentages than in the case of the corresponding rates on a large number of other commodities, subjects the shippers of deciduous fruits to undue prejudice and disadvantage. The increases in the rates on deciduous fruits since June 24, 1918, have already been compared with the corresponding increases on other traffic, and it is contended that these comparisons show that deciduous fruit is furnishing an undue proportion of the carriers' revenues. Complainant makes no attempt to establish a competitive relationship between deciduous fruits and other traffic, except apples, and its evidence on the relative increases in rates is apparently directed primarily to the issue of reasonableness. Even if there was a competitive relationship, it has been pointed out that the circumstances and conditions which brought about lower percentages of increase in the rates on other commodities are generally different from those surrounding the rates in issue.

Conclusions

The development of complainant's case in its essentials may be outlined as follows:

1. The basic character of the deciduous-fruit industry in California, and its economic condition, are shown. It is alleged that the rates in effect are higher than the traffic will bear, and that they constitute an undue proportion of the market values of the fruit.

[fol. 491-28] 2. Complainant alleges that by reason of the lengthened train schedules the service now given in the movement of this fruit is relatively less expensive to the carriers and less valuable to the shippers than during the pre-war period.

3. Average loadings of these deciduous fruits have increased.

4. The movement occurs during the season when operating conditions are most favorable.

5. The traffic moves in great volume.

6. Since June 24, 191[illegible], the rates assailed have been increased in greater proportion than transcontinental rates on certain other commodities moving in large volume.

7. The rates assailed are compared with transcontinental rates on other perishable commodities.

8. Evidence concerning the carriers' financial condition, and reductions in operating costs since 1920, is introduced.

9. It is urged that a rate of $1.44 to the groups to which a rate of $1.73 now applies will be amply compensatory.

S. J. Res. 107, generally referred to as the Hoch-Smith Resolution, approved January 30, 1925, provides that cases then pending before us involving rates on products of agriculture should be decided in accordance therewith. In making changes in the rate structure in order to correct rates which are unjust, unreasonable, unjustly discriminatory, or unduly prejudicial, we are enjoined by the terms of the resolution to give due regard, among other factors, to—

1. The conditions which prevail in the several industries of the country, in so far as it is legally possible to do so, to the end that commodities may freely move.

2. The general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years.

3. A natural and proper development of the country as a whole.

4. The maintenance of an adequate system of transportation.

We are particularly directed to effect with the least practicable delay such lawful changes in the rate structure as will promote the freedom of movement of agricultural products affected by depression at the lowest possible lawful rates compatible with the maintenance of adequate transportation service.

We have given consideration to the matters mentioned in the resolution.

The record in this case shows affirmatively that the deciduous fruits here under consideration are moving freely under the present rates, and that the volume of movement has increased greatly during recent years. Complainant's prediction that unless lower rates are secured there will be a substantial reduction in tonnage may not be realized. [fol. 491-29] The prediction is based upon the unfavorable financial return to the producers at the time of the hearing, and for a period prior thereto. But this record does not justify the conclusion either that this condition is likely to continue or that it is due in great part to the rate structure. It is suggested in the record that the unfavorable financial results are chargeable in large measure to overproduction, to inability of the eastern market to absorb the supply. If this is so, economic laws, and not the rate adjustment, will sooner or later bring about a reduction in the movement, and such reduction would be desirable. The record herein does not show the comparative levels in market value of the various commodities over a reasonable period of years.

Complainant's showing with respect to the percentage increase in the rates on this traffic over the rates in effect immediately prior to the general increase of June 25, 1918, is to be viewed in the light of the fact that a few years prior to 1918 the rates were made uniform by reductions to the lowest rate, $1.15. The reductions to points east of Chicago were from rates as high as $1.50.

The relationship of the general level of the rates on other traffic to the level prior to June 25, 1918, which was affected by water competition or other conditions different from those relating to the rates assailed, is not entitled to controlling weight in the determination of reasonable rates on the traffic under consideration. While the operating returns of the principal carriers of this traffic have shown considerable improvement in the last few years, the record does not indicate that as a whole they are yet earning as much as 5.75 per cent. The volume of the movement and the remarkable increase therein tend to indicate that the rates are reasonable rather than unreasonable.

The destination blanket under the $1.73 rate is of extreme length, and in previous cases doubt has been expressed as to the propriety of such large blankets. Com-

plainant, however, has not expressed any dissatisfaction with that method of making the rates, and the case has been presented upon the question of the reasonableness of the rates as a whole. It was stated at the argument herein that there was no desire on the part of the parties that the blanket adjustment be disturbed. In California Citrus League v. Director General, supra, where a similar blanket rate on oranges was in issue, the examiner proposed to break up the blanket, but both complainant and defendants asked that the blanket adjustment be continued, and it was not disturbed. Complainant here also appears to look with disfavor upon an increase in minimum carload weights. It is said that table grapes, which are shipped in a special package, can not be loaded much above the present mini-
[fol. 491-30] mum. The record does not justify differentiation in respect of minimum weights and rates between table grapes and other grapes, or between grapes differently packed.

The rates to Groups D to J appear rather high in comparison with the rates on fresh vegetables, melons, and cantaloupes, and the class C rates, but the $1.73 rate may be lower than would otherwise be justified to the farther-distant groups because it is blanketed to all the groups except J. Apparently complainant is principally interested in the rates to Groups A to D, inclusive. Considering the rates assailed as a whole, it does not appear that they are unreasonable. On the other hand, the comparisons with the rates from the Northwest and other producing sections indicate that the rates in issue are reasonable.

We find that the rates assailed as a whole are not unreasonable or unduly prejudicial as alleged. This finding is without prejudice to any conclusion which may be reached upon the later and more comprehensive record concerning the relation of railroad rates to agriculture which is expected to be developed in Docket No. 17000.

An order will be entered dismissing the complaint.

Appendix

TABLE I.—Number of cars of deciduous fruit other than apples shipped from California to eastern destinations, 1895 to 1923 (Nov. 14), inclusive [1]

	Apricots	Cherries	Grapes	Peaches	Pears	Plums	Miscellaneous [2]	Total
1895...	162	180	1,010	1,289	1,187	465	170	4,463
1896...	172	88	712	976	1,624	407	20	3,999
1897...	177	239	1,100	1,316	1,640	742	48	5,262
1898...	123	297	734	1,103	1,595	542	17	4,411
1899...	90	85	847	2,625	1,684	885	163	6,379
1900...	152	238	825	1,361	2,115	1,158	74	5,923
1901...	201	110	966	1,901	1,535	936	71	5,720
1902...	222	245	1,033	1,777	2,011	1,473	16	6,777
1903...	241	211	1,804	1,857	1,720	1,145	22	7,000
1904...	97	209	1,451	559	2,186	1,053	28	5,583
1905...	279	79	1,602	1,946	1,013	1,391	16	6,326
1906...	16	150	2,052	584	1,513	1,220	22	5,557
1907...	71	133	3,460	699	1,039	1,039	18	6,459
1908...	232	208	3,819	1,980	2,702	1,763	15	10,719
1909...	210	250	5,880	2,599	2,638	1,526	19	13,122
1910...	290	250	4,948	2,518	2,361	1,552	17	11,936
1911...	215	216	6,374	2,027	2,325	1,366	16	12,539
1912...	196	244	6,357	1,621	3,135	1,776	15	13,344
1913...	158	231	6,363	2,359	2,496	1,706	19	13,332
1914...	382	166	8,773	2,144	2,725	1,907	49	16,146
1915...	392	205	9,563	1,689	2,646	2,225	58	16,778
1916...	290	164	9,722	1,909	3,701	1,999	106	17,891
1917...	403	330	13,944	2,432	4,802	2,651	66	24,628
1918...	441	351	16,358	3,137	4,570	2,483	77	27,417
1919...	420	335	19,228	2,773	4,248	2,918	49	29,971
1920...	287	494	24,152	3,148	4,391	2,564	210	35,246
1921...	285	665	28,419	3,328	4,159	3,117	236	40,209
1922...	193	502	37,339	2,316	5,628	3,479	172	49,629
1923 [3]	682	[4] 612	44,654	3,670	6,856	5,240	226	61,940

[1] From north of the Tehachapi.

[2] Includes quinces, figs, and nectarines.

[3] To November 14. Shipments for year from north of the Tehachapi estimated at 65,000 carloads and for entire State at 70,000 carloads.

[4] About three-fourths of these were by express.

[fol. 491-31] Table II.—Farm Values of California Dedicuous Fruits

	Production	Farm value Dec. 1, per net ton		Production	Farm value Dec. 1, per net ton
Apricots:	Tons		Peaches:	Tons	
1919.....	175,000	$80.00	1919.....	430,000	$60.00
1920.....	110,000	85.00	1920.....	360,000	76.00
1921.....	100,000	50.00	1921.....	310,000	42.00
1922.....	120,000	70.00	1922.....	420,000	45.00
Cherries:			Pears:		
1919.....	12,400	150.00	1919.....	115,000	72.00
1920.....	17,500	200.00	1920.....	102,000	90.00
1921.....	13,000	125.00	1921.....	86,000	62.50
1922.....	12,000	180.00	1922.....	125,000	50.00
Grapes, table:			Plums:		
1919.....	200,000	75.00	1919.....	42,000	60.00
1920.....	190,000	75.00	1920.....	35,000	90.00
1921.....	310,000	75.00	1921.....	42,000	53.00
9122.....	240,000	52.00	1922.....	46,000	50.00
Grapes, wine:			Prunes: [1]		
1919.....	400,000	50.00	1919.....	135,000	240.00
1920.....	375,000	75.00	1920.....	97,250	130.00
1921.....	310,000	82.00	1921.....	100,000	130.00
1922.....	420,000	65.00	1922.....	95,000	140.00

[1] Dried basis.

Table III.—Average Prices per 100 Pounds Received in Eastern Markets for California Deciduous Fruits

	1917	1918	1919	1920	1921	1922	1923
Apricots	$5.52	$5.64	$7.81	$10.17	$7.83	$7.91	$5.70
Table grapes	4.51	6.37	7.01	8.63	6.42	5.65	
Wine grapes	4.39	5.63	7.02	9.99	7.89	6.89	5.24
Peaches	3.92	5.21	4.63	5.42	5.68	3.68	5.04
Pears	5.45	6.00	7.48	8.15	7.64	5.48	6.12
Plums	5.43	7.06	7.30	9.55	7.08	5.56	5.38
All varieties[1]	4.85	6.17	7.08	8.84	6.90	5.95	5.44

[1] Weighted average.

[fol. 491-32] At a Session of the Interstate Commerce Commission, Division 1, Held at Its Office, in Washington, D. C., on the 25th Day of June, A. D. 1925.

No. 15137

California Growers' & Shippers' Protective League

v.

Southern Pacific Company et al.

Order

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the commission, division 1.

George B. McGinty, Secretary. (Seal.)

Redirect examination:

[fol. 492] I found that the rates on citrus fruits from the Brownsville district of Texas, which produces a very good quality of grapefruit, are considerably higher than the rates on deciduous fruit from that section. As an illustration, the rate on citrus fruits from Mercedes, Texas, a point in the Brownsville district, to Chicago, is $1.315 for a minimum of 24,000 pounds, whereas the rate on deciduous fruit is $1.10, minimum 20,000 pounds. To St. Louis the rate

on citrus fruit is $1.215 and 96 cents on deciduous fruits. To Minneapolis the citrus fruit rate is $1.485 and the deciduous fruit rate $1.21. Those are representative of the rates to Western Trunk Line Territory from the Brownsville district. From Florida points the rates on pineapples and deciduous fruit are the same in practically every instance. There is very little deciduous fruit moving from Florida.

Recross-examination:

In connection with my exhibits I did not use the square root theory in my computation. The only use I made of that theory was to call attention to the fact that the Commission evidently had followed it in the cottonseed products rate scale. I am not, in this particular case, contending for the propriety of the square root theory. I have merely used the Commission's percentage rate of progression.

[fol. 493] Thereupon WILLIAM A. CAIN was called as a witness in behalf of Intervenors, Arkansas Packing Corporation, Ozark Fruit Growers Association, and Arkansas Railroad Commission, and having been duly sworn, testified as follows:

I live at Fayetteville, Arkansas. My first experience in railroad work was a short line railroad in Arkansas, 1911 to 1918, in the capacity of agent, general agent, assistant traffic manager, freight traffic manager. Since that time I have been in the employ of the fruit people in northwest Arkansas. In connection with my duties I have had occasion to check rates to, from and between points in southwestern territory.

Springdale in northwest Arkansas is the center of the grape producing section. Practically all of the present production of grapes in Arkansas is in the northwest corner of the state, but there is a carload production near Judsonia, which is in the eastern part of the state, and there are a few cars produced per year near Little Rock, Arkansas.

The southwest corner of Arkansas is the peach producing section, containing about 15,000 acres of peaches. A few of the rates to the Atlantic seaboard from Highland, Arkansas, are as follows: Rate to Boston, $1.69; rate to New York, $1.63; rate to Philadelphia, $1.63; to Baltimore, $1.63.

In the Ozark region, north of Springdale, Arkansas, there exists about 22,000 acres of grapes. In 1923 we shipped approximately three hundred cars of grapes, and in the season just past, 1926, we shipped a little over two thousand cars to eastern destinations, the majority to points [fol. 494] west of the Illinois-Indiana state line. We moved less than one hundred cars east of that line.

The document now shown to me states a comparison of the rates in effect from points in Arkansas to the east, as compared with the rates in effect from California to the east. Page 3 of the exhibit shows a comparison of the present rates from Arkansas as compared with the present rates in effect in California. Page 5 of the exhibit is a statement showing the comparison of the present rates on grape carloads from Springdale, Arkansas, to destinations shown, with rates from Lodi, California, with the rates as proposed by the Complainant in this proceeding.

Thereupon there was offered and admitted in evidence Intervenor's Exhibit No. 108, pages 3 and 5 of which are in the following form:

[fol. 495] INTERVENOR'S EXHIBIT No. 108

Page No. 3

Witness: Cain

Statement Showing a Comparison of the Present Rates on Grapes, Carload, from Springdale, Arkansas, to Destinations Shown with Present Rates from Lodi, California, to the Same Destinations.

Destinations	Springdale, Arkansas			Lodi, California		
	Distance		Pres. rate	Distance		Pres. rate
St. Louis, Mo	(16)	344	67	(1)	2132	1.73
Kansas City, Mo	(16)	273	61	(2)	1958	1.73
Topeka, Kans	(17)	339	61	(2)	1890	1.73
Lincoln, Neb	(18)	486	78	(2)	1701	1.73
Omaha, Neb	(18)	472	78	(2)	1718	1.73
Sioux City, Ia	(19)	573	95	(3)	1819	1.73
Des Moines, Ia	(20)	493	78	(4)	1863	1.73
Davenport, Ia	(21)	591	78	(4)	2038	1.73
Burlington, Ia	(22)	587	78	(5)	2008	1.73
Ottumwa, Ia	(21)	482	78	(5)	1934	1.73
Mason City, Ia	(23)	680	95	(6)	1926	1.73
Sioux Falls, S. D	(24)	699	95	(7)	1910	1.73
Pierre, S. D	(20)	887	1.47½	(8)	2114	1.73
Fargo, N. D	(24)	997	1.67	(9)	2239	1.73
Valley City, N. D	(25)	1511	1.76	(9)	2297	1.73
Mankato, Minn	(26)	716	.95	(3)	1995	1.73
Duluth, Minn	(25)	918	1.09½	(3)	2283	1.73
Red Wing, Minn	(26)	807	.95	(3)	2119	1.73
St. Paul, Minn	(27)	766	.95	(3)	2096	1.73
Springfield, Ill	(28)	516	.83½	(10)	2155	1.73
Chicago, Ill	(28)	629	.83½	(3)	2206	1.73
Milwaukee, Wis	(29)	788	.87	(11)	2291	1.73
La Crosse, Wis	(22)	818	.95	(3)	2164	1.73
Indianapolis, Ind	(30)	585	1.19	(12)	2373	1.73
Ft. Wayne, Ind	(31)	686	1.25½	(10)	2422	1.73
Detroit, Mich	(31)	783	1.34½	(13)	2489	1.73
Cleveland, Ohio	(30)	880	1.36½	(14)	2563	1.73
Columbus, Ohio	(32)	765	1.30½	(15)	2521	1.73
Toledo, Ohio	(31)	781	1.30½	(14)	2450	1.73
Pittsburgh, Pa	(32)	956	1.44	(15)	2674	1.73
Buffalo, N. Y	(31)	1024	1.49	(14)	2746	1.73

Tariff Authority:

S. W. L., 74-G, I. C. C. 1802.
N. P., 413-M, I. C. C. 8147.
Trans. Cont., 3-U, I. C. C. 1174.

[fol. 496] Page No. 5

Statement Showing a Comparison of the Present Rates on Grapes, Carload, from Springdale, Arkansas, to Destinations Shown with Proposed Rates from Lodi, California to the Same Distances

	Springdale, Arkansas			Lodi, California		
	Distance		Pres. rate	Distance		Pres. rate
St. Louis, Mo	(16)	344	67	(1)	2132	1.44
Kansas City, Mo	(16)	273	61	(2)	1958	1.44
Topeka, Kans	(17)	339	61	(2)	1890	1.44
Lincoln, Nebr	(18)	486	78	(2)	1701	1.44
Omaha, Nebr	(18)	472	78	(2)	1718	1.44
Sioux City, Ia	(19)	573	95	(3)	1819	1.44
Des Moines, Ia	(20)	493	78	(4)	1863	1.44
Davenport, Ia	(21)	591	78	(4)	2038	1.44
Burlington, Ia	(22)	587	78	(5)	2008	1.44
Ottumwa, Ia	(21)	482	78	(5)	1934	1.44
Mason City, Ia	(23)	680	95	(6)	1926	1.44
Sioux Falls, S. D	(24)	699	95	(7)	1910	1.44
Pierre, S. D	(20)	887	1.47½	(8)	2114	1.44
Fargo, N. D	(24)	997	1.67	(9)	2239	1.44
Valley City, N. D	(25)	1511	1.76	(9)	2297	1.44
Mankato, Minn	(26)	716	.95	(3)	1995	1.44
Duluth, Minn	(25)	918	1.09½	(3)	2283	1.44
Red Wing, Minn	(26)	807	.95	(3)	2119	1.44
St. Paul, Minn	(27)	766	.95	(3)	2096	1.44
Springfield, Ill	(28)	516	.83½	(10)	2155	1.44
Chicago, Ill	(28)	269	.83½	(3)	2206	1.44
Milwaukee, Wis	(29)	788	.87	(11)	2291	1.44
La Crosse, Wis	(22)	818	.95	(3)	2164	1.44
Indianapolis, Ind	(30)	585	1.19	(12)	2373	1.44
Ft. Wayne, Ind	(31)	686	1.25½	(10)	2422	1.44
Detroit, Mich	(31)	783	1.34½	(13)	2489	1.44
Cleveland, Ohio	(30)	880	1.36½	(14)	2563	1.44
Columbus, Ohio	(32)	765	1.30½	(15)	2521	1.44
Toledo, Ohio	(31)	781	1.30½	(14)	2450	1.44
Pittsburgh, Pa	(32)	956	1.44	(15)	2674	1.44
Buffalo, N. Y	(31)	1024	1.49	(14)	2746	1.44

Tariff Authority:
S. W. L., 74-G, I. C. C. 1802.
N. P., 413-M, I. C. C. 8147.

[fol. 497] I cannot estimate the amount of peaches shipped out of Arkansas. They are harvested in from thirty to thirty-five days during the month of August. That period would cover the peach movement out of Arkansas. They are all shipped in refrigerator cars. The approximate volume of the peach movement from this territory runs as high as four hundred cars in some years, and our peaches are loaded to the minimum—20,000 pounds. There are some peaches which bear about once every six years. We have killing frosts and it is not a very dependable crop. I doubt if we moved 50 cars from northwestern Arkansas in 1926 and in 1925 we did not have a crop. The 1924 movement was only a few cars. The last good crop we had was

in 1920, the last six years having been practically nothing.

They do not market any wine grapes in Arkansas that I know of. We produce exclusively Concords and Emperors, the latter being a table grape of the Concord type.

I do not know of any carload movement of plums from Arkansas. We are not worried about the California plums. Northwestern Arkansas probably ships from six to eight cars of pears a year, so we are not very much worried about California pears.

I am not offering the rates shown in Exhibit No. 108 on grapes from various points in Arkansas to various destinations as reasonable rates. I regard many of them as being ridiculous and unreasonably high. We have filed complaints against many of these rates in a case which is still pending. I would prefer a reduction of the rates all along the line.

Forty-two cars of grapes moved in 1926 from Arkansas to South Dakota points.

My position, and the position of the people I represent, [fol. 498] is that we have approximately twenty-two thousand acres of new vineyards just coming into production, and if the Commission sees fit to reduce the rates from California without reducing the rates from Arkansas and Missouri, we believe it will simply wipe that industry off the face of the globe. We have no objection in the reduction in the rate from California, provided we get a similar reduction. To that extent we are intervening on the part of the complainants.

Thereupon, said intervenor rested.

V. S. Andrus was thereupon called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

I reside in Alameda, California. I am assistant to the General Manager of the Southern Pacific Company, in which position I have served for two years. I have had twenty-one years' experience in the operating department of steam railroads, serving in various capacities, including special inspector and transportation inspector on the staff of the General Manager.

The line from San Francisco to Ogden includes many bridges. It crosses the Truckee and Humboldt Rivers forty-one times. There is a cut-off across the Great Salt Lake, erected at a cost of $8,358,128.00. This requires constant repairs and a heavy cost. Between Truckee and Blue Canyon there are twenty-three miles of snow sheds, involving expensive repairs and heavy losses from fires. It involves high maintenance cost.

The transportation of deciduous fruits from California requires special service in the way of assembling and hauling trains, yard engines and helper locomotives. During the year 1926 there was a total of 363,574 special service miles by the Southern Pacific Company in California, of which sixty-five per cent, or 237,287 miles represented oper-
[fol. 499] ations on transcontinental carriage of deciduous fruits. The operation of many assembling trains in the transportation of deciduous fruits has the result of reducing the engine efficiency.

The result of a comparison of fifty fruit trains and fifty manifest trains operated in the district between Roseville, California, and Sparks, Nevada, during the year 1926, showed the following result:

[fol. 500]

Summary

Kind of train	Number of trains	Average cars per train		Average speed miles per hour
		Loads	Empties	
Fruit	50	56	....	10.8
Manifest	50	49	4	10.3

Kind of train	Tons per principal locomotive mile		Ratio locomotive capacity to		Tons per gallon fuel oil	
	Gross	Net	Gross	Net load	Gross	Net
Fruit	2417	805	88.6	29.5	42.8	14.3
Manifest	2472	1341	89.9	48.7	43.2	23.4

[fol. 501] It therefore appears that the net loading of fruit trains utilize but 29.5 per cent of locomotive capacity, while manifest trains utilize 48.7 per cent. It is also true that in the movement of fruit trains 14.3 net tons are transported per gallon of fuel oil consumed, whereas in the case of manifest trains 23.4 net tons are moved per gallon of fuel oil consumed.

It is also necessary in the handling of deciduous fruit traffic to build up a large storage of refrigerator cars each year in advance of heavy shipping season. During 1923 our Operating Department made a study of "out of pocket expense" involved in moving refrigerator cars out of line for storage purposes. A close approximation of "out of pocket expense" in this connection shows a cost per car of $4.30. This item does not include the cost of extra handling out of and into Roseville Yard by yard engine, which would approximate another dollar per car.

The gross ton miles per train hour of local trains exceeds that of fruit trains by eighty-one per cent. Local trains exceed fruit trains as to net ton miles per train hour by one hundred eighty-three per cent. Actual wage costs of fruit trains per one hundred gross and net ton miles exceeds local trains by fifty-seven per cent and one hundred sixty per cent, respectively.

The schedule of manifest trains from Roseville to Chicago via Southern Pacific Railroad, Union Pacific, and Chicago & Northwestern is one hundred seventy-eight hours thirty minutes, compared to one hundred fifty-four hours for citrus and deciduous fruits. The schedule from Colton to Chicago via Southern Pacific and Chicago, Rock Island [fol. 502] & Pacific is one hundred eighty-eight hours forty minutes for manifest freight and one hundred fifty-four hours for citrus and deciduous fruits. The higher speed of deciduous over manifest trains means lesser tonnage per fruit train, and adding to other freight trains the expense of delay caused by giving preference to fruit trains.

Deciduous fruit loading has marked fluctuations, a condition which is difficult to deal with in providing economical assembling of trains.

Consolidated figures of all of the companies show that on the basis of cars, branch line loading of deciduous fruits represents 62.3 per cent of the total, and on the basis of tons, 61.6 per cent of the total. The higher unit cost of branch line service is clearly apparent. For total operations, branch line costs exceed main line costs by one hundred fifty per cent. The maintenance of way and structure expense on branch lines exceeds by two hundred sixty per cent the gross ton mile cost of the comparable main line expense.

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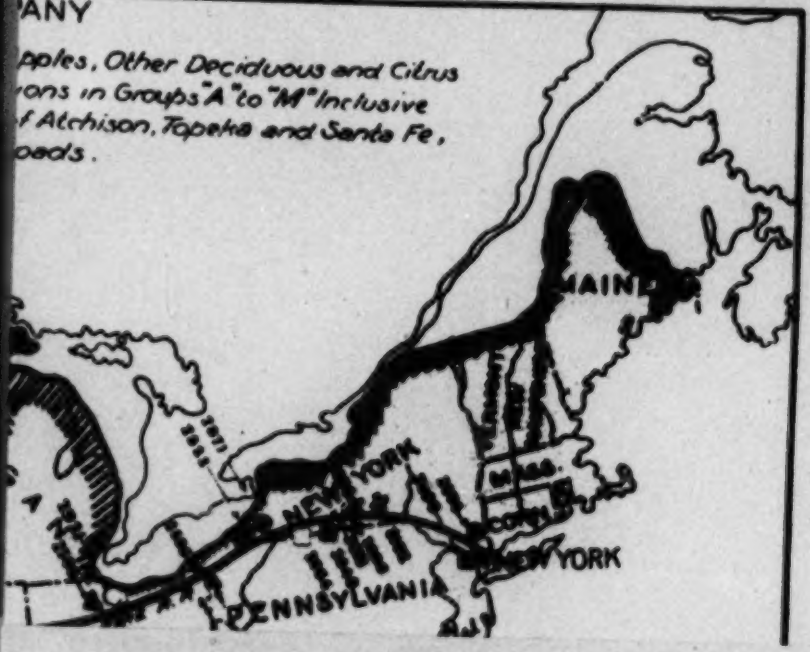

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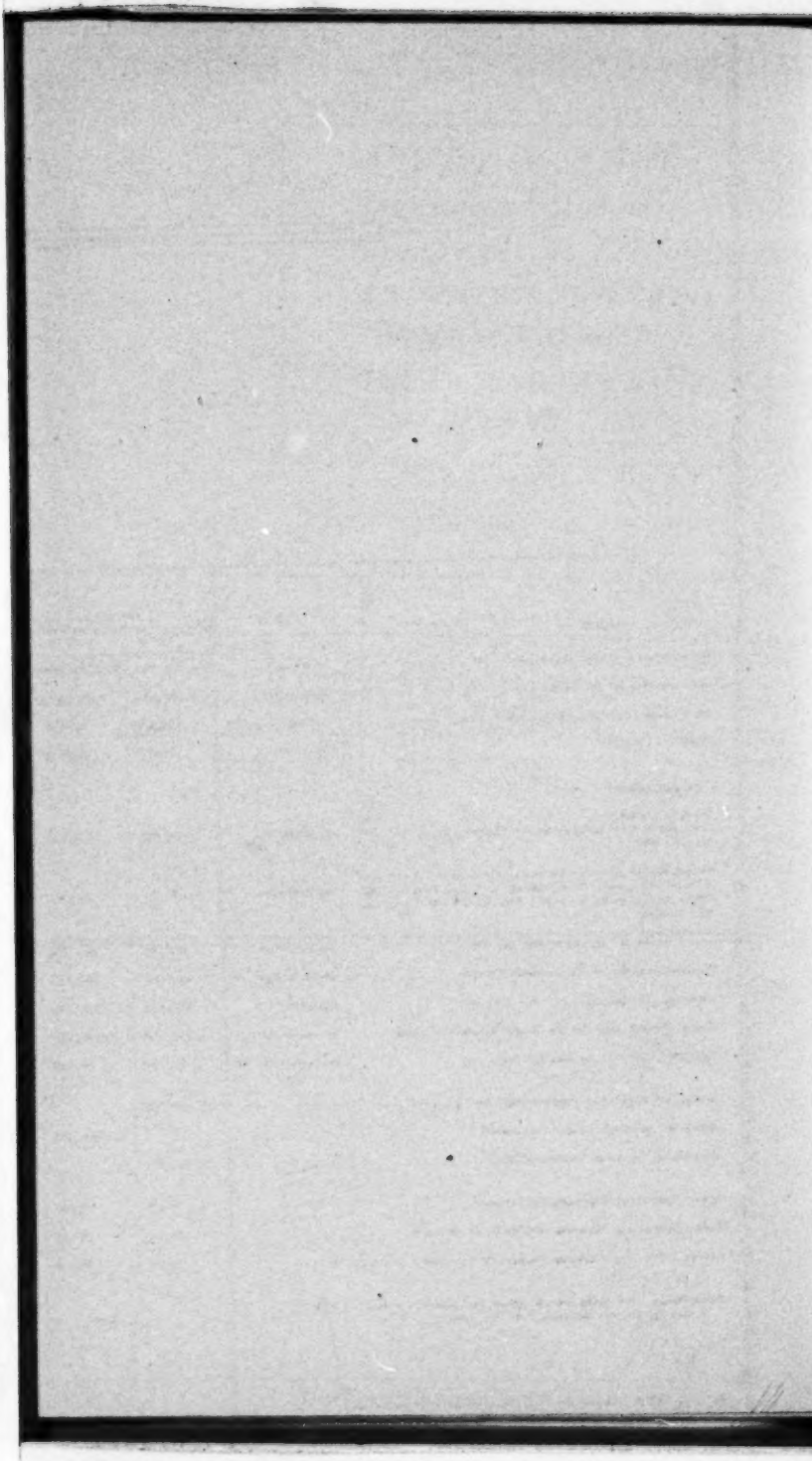


Largely due to the heavy refrigerator car traffic, in 1925 the Southern Pacific Company double tracked its line between Blue Canyon and Truckee at an expenditure of $9,000,000.00. The double track is, of course, utilized to the benefit of all traffic moved over the Sierras. Had it not been for the refrigerator traffic, the expenditure for second track might have been deferred for several years. This resulted in a saving in operating expenses of $250,000, but the carrying charge on the investment was twice that amount. It was necessary to do the second track work to provide adequate service during the peak months.

The document now shown to me marked as "Map Showing Average Haul Per Car, Separately, for Grapes, Apples, [fol. 503] Other Deciduous and Citrus Fruits, etc." is a graphic illustration of the average haul per car for grapes, apples and other deciduous and citrus fruits from production centers in California to destinations in Groups A to M, inclusive. The showing on the map is further segregated as to movement via the lines of the Santa Fe, Southern Pacific, Union Pacific, and Western Pacific railroads, and their eastern connections which handle the majority of the fruit traffic. Production centers are estimated and believed to be conservatively determined.

Thereupon there was offered and admitted in evidence Defendants' Exhibit No. 109, which is in the following form:

(Here follows Defendants' Exhibit No. 109, marked side folio pages 504 and 505.)

[fol. 506] The average cost for a stock car is $1,940; for a gondola $2,380; for a box car $1,960, and for a refrigerator car $3,194. The total purchase money for refrigerator equipment since 1924, by the Santa Fe, Southern Pacific, Union Pacific, and Western Pacific railroads amounted to about $121,000,000. That represents the refrigerator cars purchased to take care of the traffic moving in refrigerator cars and is directly because of the increase in the volume of that traffic.

Between 1917 and 1926 the gross tons per train have increased thirty-eight and a fraction per cent, while net tons have increased but eight and a fraction per cent. This

is due in a large measure to the increasing amount of perishable traffic with the accompanying relatively greater tonnage of dead weight refrigerator car traffic. As a result of the increased tonnage per train—heavier locomotives are required. The heavier type of locomotives are considerably more expensive, and have resulted in a very much heavier investment in locomotives by the carriers.

It is true that during the peak season of the deciduous fruit traffic, the gross or net ton mile costs are lower than for the remaining months of the year. However, in connection with these low operating costs during the peak of the deciduous fruit traffic, must be considered the expenditures made during the light traffic months in anticipation of the peak traffic. Other operating expenses, such as traffic and overhead, that are not susceptible of force increase or decrease to meet the fluctuations in traffic, are less per ton during the peak season than otherwise during the year, but these forces are developed and maintained to handle near mean average traffic, and a part of the carrying expense [fol. 507] during the light traffic months is ratably chargeable to the months of heavy traffic volume.

Maintenance of way expenditures are less during the peak season than otherwise during the year.

The document marked as page 25 of Exhibit No. 109 shows a statement of operating expenses, taxes and equipment rents, wherein certain operating accounts are equated and reconstructed to ratably carry forward into the months of heavy traffic, expenditures made in behalf thereof during lighter traffic months.

W. T. QUIRK was thereupon called as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I am connected with the Santa Fe Railroad as Assistant to the General Manager of the Coast Lines at Los Angeles, California. I have been with the Santa Fe Coast Lines for the past twenty-five years as dispatcher, chief dispatcher, trainmaster, superintendent, general inspector of transportation, and my present position. My total railroad experience has been something over forty years.

I have made a study in connection with the concentration service of the California deciduous fruit traffic, the operation of cars, storing of cars, movement of the cars to concentration points, and movement in the line haul as far as Belen.

As the deciduous fruit season approaches, as many refrigerator cars as possible are stored on each division requiring them. On August 1, 1926, we had on Coast Lines a total of 4,907 empty refrigerator cars ready for loading, and on September 1, 1926, a total of 7,236. Even in spite [fol. 508] of this preparation, it usually becomes necessary to run empty refrigerator cars from Chicago and other points to the Coast—toward the end of the season. It also becomes necessary at times to move a surplus from one division to another to fill shortage.

The deciduous fruit traffic involves a great amount of labor of all kinds, including switching. The refrigerator cars in this traffic must be inspected. All cars must be cleaned, washed and deodorized.

The cars, after being loaded, must be assembled at assembly points, which in the Valley Division is Bakersfield and San Bernardino in the Los Angeles Division. For this purpose a great amount of switching is required.

All shipments on the Santa Fe line, from Richmond, California, to Belen, New Mexico, and from Los Angeles to Barstow, California, involves hauling the traffic over the Tehachapi Mountains. The physical conditions on the mountain prohibit hauling more than blocks of fifty-six loads, and requires heavy engine service. The cost of maintenance per track mile on the Valley Division for the year 1926 was $2.625.04, as compared to $4,029.97 on the route over the Tehachapi Mountains. These figures are normal. [fol. 509] The grade from Los Angeles over the Tehachapi Mountains is particularly heavy, with an almost continual curvature. It has fifteen tunnels. It is single tracked and involves difficult and congested conditions with heavy maintenance expense.

From Barstow the Atchison, Topeka & Santa Fe lines proceed through the second division from Arizona to Needles. Here there is an ascending grade of 1.0% for about 16 miles, for 46 miles there is an ascending grade of 1.4%. These grades necessitate additional brakemen. In

the next district, Needles to Seligman, there is an ascending grade of 1.4% for 150 miles. The trains then proceed to the Albuquerque Division. This is 143 miles long and the grade ascends 1.4% for 10 miles. For 128 miles the grade is ascending 0.6%.

In addition to negotiating heavy grades in traveling from points in California to Albuquerque and Belen, which constitutes the Coast Lines of the Atchison, Topeka & Santa Fe Railroad, we encounter considerable desert. The desert conditions present difficulties in the water supply. Much of the water must be hauled to fuel and water stations. For this purpose 230 tank cars are required annually in the Albuquerque Division and 142 cars in the Arizona Division. The Albuquerque Division extends from Albuquerque on the east to Seligman on the west, and the Arizona Division from Seligman to Bakersfield. The water conditions require deep wells at some points, together with pumps and reservoirs. Some of the reservoirs become dry during the year and the water must be then hauled in.

In New Mexico, Arizona and the desert portion of California there are frequent and severe cloudbursts and floods [fol. 510] which greatly damage track and roadbed. These occur usually from July to November of each year. Heavy expense is involved in protecting the track and roadway from this risk.

Another feature that adds to the cost of handling deciduous fruit is the preponderance of the revenue traffic eastward. Therefore, during the periods of heavy deciduous fruit traffic eastward, the surplus power and crews not needed to haul traffic westward must be returned to their respective western terminals in order to protect the perishable business moving eastward. This is accomplished by running the power, light or double heading and dead-heading the train crews as circumstances permit.

Another matter of additional expense is because the deciduous fruit traffic must be handled on an expedited schedule and such schedules are more expensive than the slower freight schedules, by reason of added fuel and water consumption, wear and tear on equipment and track, and the necessity of cutting out tonnage to make schedule.

Our deciduous fruit schedule is 154 hours from Bakersfield and San Bernardino to Chicago. The schedule of our regular trains is 196 hours and 50 minutes to Chicago.

The cost of materials used in repair of refrigerator cars, excepting refrigerator devices, increased between the year 1914 and the year 1926, the increase in cost of materials ranging from 108% to 240%, with the exception of one material used therein, which has decreased 22.9%. A typical repair job on refrigerator cars in 1914 cost $32.44 for a light repair job, as compared with $55.26 in 1926. A typical heavy repair job upon a refrigerator car in 1914 cost [fol. 511] $41.08, as compared with $64.21 in 1926. A job which in 1914 cost us for materials and labor $32.44, in 1918 would cost us $67.80, in 1923, $57.36, and in 1926, $55.26, and a heavy repair job which in 1914 cost us $41.08, cost us $64.35 in 1918, $61.15 in 1923, and $64.21 in 1926. Light repairs are those involving a man's labor for eight hours, and heavy repairs requiring more.

Cross-examination:

We have a perishable traffic moving continuously throughout the year. Trainloads move every day in the year over our line. Out of Bakersfield our trains average 56 carloads per train eastward as far as Belen. This perishable traffic represents the bulk of our transcontinental movement. We move some freight trains eastward which do not carry perishable products. These encounter the same difficulties and other conditions that have been enumerated. There is no one peak to the perishable traffic.

We also have a local freight train service in California. The efficiency of that service is about the same as our pick-up service.

Our deciduous fruit train schedule is about 24 hours slower than it was prior to the time that the director general took control of the railroads. Our service is 24 hours slower than in 1918. As a result, our present schedule is less expensive than if we had a 130 hour schedule, because we can haul more cars per train under the schedule of 154 hours.

We have considerable livestock traffic on our division. We supply cars for that traffic, hauling them from available points. There is a considerable empty car haul with [fol. 512] our livestock traffic. The cars for this traffic are distributed by local trains in substantially the same manner as we distribute refrigerator cars for loading.

We have considerable traffic in tank cars. There is a considerable empty car haul in tank cars.

After the fruit trains leave Bakersfield the service is entirely over the main line tracks of the Santa Fe as far as Belen. That is as far as my jurisdiction extends. That is true of trains leaving San Bernardino.

Most of the traffic we pick up in the San Joaquin Valley is branch line traffic, considering the Visalia line as a branch. The Visalia line is not a stub-end line, but starts from a point on the main line of the Santa Fe and connects with the main line at another point. Some freight moving locally between Bakersfield and San Francisco may go over that route.

Redirect examination:

Wages paid enginemen and trainmen in 1917 were lower than those paid in 1926. Fuel costs in 1926 were higher than in 1917. In distributing our livestock cars we make special trips. The train crew usually waits until the train is loaded and then starts off. Sometimes it takes so long to load that the hours of service interfere. In that event we usually run a train immediately out of the terminal to pick up the stock that has already been loaded.

James J. Mahoney was thereupon called as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I live at Kansas City, Missouri. I am Assistant Superintendent of Transportation of the Santa Fe Lines, which position I have held for approximately two years. I have been with the Santa Fe since 1912 in various capacities.

[fol. 513] I am familiar with the operations of the Santa Fe System Lines from Belen, New Mexico, eastward to the Chicago terminal.

At Belen all deciduous fruit trains are reclassified with reference to their final destination. Cars going north are cut out and forwarded on northbound trains.

[fol. 514] A large percentage of cars of deciduous fruits are billed to Belen for reconsignment and these are switched at this point to their destination. Many cars at Belen have

not been reconsigned before arrival and are therefore cut out and held for reconsignment. This involves the switching of practically all of the deciduous fruit trains arriving at Belen. An average of five cars per train are cut out at Belen.

The switching of trains involves the employment of additional men and engines.

It is inecessary to maintain helper crews at Belen by reason of the grades between that point and Mountainair, New Mexico.

The next stage in the transcontinental travel is the division between Vaughn and Clovis, which does not involve any extraordinary service except that it is a semiarid territory, involving heavy and expensive water problems.

At Clovis deciduous fruit trains are again subjected to extra handling and this is an important diversion point, where many cars are cut out.

The next intermediate terminal is Amarillo, Texas. This is a diversion point, and here cars are cut out of trains for diversions and annexed to connecting lines.

The next terminal is Canadian, Texas, and the continuous ascending grade at this point necessitates the use of helper engines.

The next division line is between Amarillo, Texas, and [fol. 515] Waynoka, Oklahoma, and the next division terminal at Wellington, Kansas. At Wellington there is an important diversion point involving additional switching. The entire movement at Wellington is over a single track railroad.

From Wellington to Chicago is that part of our railroad known as the "Eastern Lines"

Between Wellington and Argentine, Kansas, there are so many diversions made en route that it is necessary to completely reswitch trains and reclassify them.

Leaving Argentine another helper district is encountered, covering a short distance.

From Argentine to Marceline, Missouri, there is an 0.8% grade.

The next two divisions are between Argentine, Kansas, and Chillicothe, Illinois, and between Chillicothe and Corwith, the latter being the outer yard of Chicago.

There are some peculiarities in the handling of deciduous

fruits at final terminal. At Chicago deciduous fruit trains are received at the Corwith yard, which during the normal times and before the fruit movement becomes heavy, accommodiates all of the inbound and outbound traffic entering or leaving Chicago. When the fruit traffic becomes heavy, the Corwith yard is turned over almost entirely to fruit traffic and it is necessary to transfer the handling of regular traffic from the Corwith yard to the Nerska Yard, which is done at an added cost of operation, because this increases the number of switch engine assignments in this district. Extra switch engines are also required to handle the traffic in the yards, which, under normal conditions, is handled by crews and engines in main line train service without additional expense.

[fol. 516] Ordinarily the Chicago yards are operated on a systematic basis and on regular schedule. But when deciduous fruit traffic begins to move in volume, the whole performance requires changes because of the fast fruit schedules which will not admit of the ordinary delays incident to the usual traffic.

Deciduous fruit trains must be inspected for mechanical defects upon arrival. They must then be classified according to destination.

The document now shown to me, marked for identification as Defendant's Exhibit 116, is an aid in the explanation of classification transfer service and terminal switching that takes place at the Chicago terminal.

From this exhibit it will be seen that only 34.54 per cent move through to connecting lines on arrival. The remainder were billed to Chicago proper on arrival. 78.52 per cent of the cars billed to Chicago were reconsigned to eastern connections, but before this reconsignment took place 393 cars out of 1010 were first ordered to and were moved to our 21st street team tracks to take advantage of the Chicago market and inspection and sales privilege for the information of eastern buyers. This causes extra expense in switch movement over a distance of 5.6 miles and the return movement.

Out of the 793 cars 100 were reconsigned before they actually moved to the 21st street yard. Nevertheless this entailed the expense of carding and switching out these cars preparatory to the movement to the 21st street yard.

300 of the 793 cars were carded "hold" and switched to the "hold" track, and thereafter moved out and switched to [fol. 517] connecting lines at considerable expense. All cars that were forwarded east were re-iced upon arrival at Chicago.

Of the 1010 cars billed to Chicago only 217 were actually released at Chicago, of which 48 cars were first moved to the 21st Street yard.

Thereupon there was offered and admitted in evidence Defendant's Exhibit No. 116, which is in the following form:

[fol. 518]

EXHIBIT No. 116

Witness: Mahoney

I. C. C. Docket 19130

Statement Showing Disposition Made of Cars of Fruit Arriving Corwith Yard Using One GFX Train Daily, September 15 to October 15 1926, Showing Number Cars of Fruit in Train, Number of Cars Moving Through on Through Billing, Number of Cars Consigned Chicago, Number of Cars Diverted to Connections from Corwith Carded Team Track on Arrival, Number Cars Reconsigned to Connections after Placing to Team Tracks, Number of Perishable Released on Team Tracks, Number Cars Moved from Team Tracks to Auction House, Number of Cars Carded Hold on Arrival Reconsigned to Connections and Number of Cars Carded Hold on Arrival Ordered to Auction House

Date	Total fruit	Fruit carded thru on arrival	Fruit billed to Chicago	Fruit delivered Corwith to 21st St.	Fruit carded 21 reconsigned before moved to 21st St	Fruit at 21st St. reconsigned to connections	Fruit released at 21st St.	Fruit 21st St. reconsigned to auction house	Holds reconsigned to eastern connections	Holds reconsigned to auction house
9/15....	45	21	24	20	..	1.	5	2	3	1
16....	47	25	22	10	..	9	..	1	11	1
17....	32	17	15	9	1	5	2	2	2	3
18....	40	15	25	12	5	10	2	..	5	3
19....	54	10	44	41	..	40	1	..	2	1
20....	50	26	24	19	..	14	3	2	5	..
21....	44	15	29	15	1	9	3	3	13	..
22....	49	21	28	19	1	10	6	3	8	..
23....	51	13	38	14	1	8	3	3	23	..
24....	36	9	27	18	2	11	4	3	6	1
25....	64	17	47	29	2	18	7	4	16	..
26....	52	17	35	24	6	20	4	..	3	2
27....	81	29	52	41	2	28	10	3	9	..
28....	38	7	31	15	1	12	2	1	12	3
29....	50	17	33	15	9	14	..	1	7	2
30....	40	16	24	15	6	8	4	3	3	..

10/ 1....	50	20	30	19	4	10	8	1	7	..
2....	62	18	44	21	7	17	2	2	16	..
3....	43	16	27	11	6	8	2	1	8	2
4....	54	18	36	18	3	8	10	..	15	..
5....	47	17	30	16	2	5	7	4	12	..
6....	46	10	36	17	1	13	3	1	16	2
7....	76	31	45	17	11	12	5	..	17	..
8....	37	6	31	7	5	6	1	..	19	..
9....	68	25	43	30	6	16	12	2	5	2
10....	38	21	17	13	..	8	5	..	3	1
11....	51	11	40	28	3	16	12	..	7	2
12....	66	29	37	31	..	22	9	..	6	..
13....	39	8	31	14	4	9	3	2	12	1
14....	47	10	37	16	8	9	6	1	12	1
15....	46	18	28	8	3	5	..	3	17	..
Total...	1543	533	1010	582	100	393	141	48	300	28

NOTE.—1543 cars fruit received in the 31 trains.
533 cars fruit or 34.54 percent moved thru on arrival.
1010 cars fruit or 65.45 percent billed Chicago proper on arrival.
793 cars fruit or 78.52 percent of the 1010 cars originally billed Chicago were reconsigned to Eastern connections.
217 cars fruit or 21.48 percent of the 1010 cars billed Chicago released at Chicago.

[fol. 519] Of the deciduous fruit moving into Chicago disposed of at the auction house located on the Santa Fe Rails, the Santa Fe moves in about 20%. The remaining 80% arrives over other railroads and is reswitched over the 31st street and Western avenue yard via the Santa Fe. The cars, upon being released, are switched back.

The general operating conditions in Chicago switching district during the heavy deciduous fruit movement is detailed on the document marked for identification as Defendant's Exhibit 117. From this exhibit it appears that during the thirty-one day period described therein 181 trains moved into Chicago, handling 7110 cars of perishable freight. 62.07% were billed to Chicago proper on arrival. 37.93% moved through to connecting lines on arrival, of which 2166 cars were delivered to connecting lines through the Belt Railway of Chicago.

This exhibit further shows that on September 15th the accumulation at Corwith was only fifteen cars, which increased to 350 cars on September 25th, and fluctuated during the remainder of the period.

On September 15th there were 42 cars at the auction house team tracks, which subsequently increased to 63 cars on October 1st and fluctuated thereafter. The total cars on hand on September 15 was 176, increasing to 729 on September 27th and fluctuating in the interim and thereafter.

This exhibit also shows the total fruit diversions over this period of time, which involves switching and extraordinary switching service to accomplish the diversions.

[fol. 520] This exhibit also shows the number of cars awaiting disposition at Corwith, which were re-iced daily.

This exhibit also shows the number of cars billed to Chicago and subsequently reconsigned to eastern connections, and the number therof moved to the 21st street team tracks to take advantage of the Chicago market for inspection and sales.

Thereupon there was offered and admitted in evidence Defendants' Exhibit No. 117, which is in the following form:

(Here follows Defendants' Exhibit No. 117, marked side folio page 521)

[fol. 521] I. C.

Statement Showing Disposition Made of Cars of Fruit Arriving Corwith Yard Se
for Chicago Proper-Number Moving Through on Through Billing to Chicago
Re-icing at Corwith, Total Fruit Diversions, Number Unloaded on Team Track

Date 1926:	Number trains with perishable arrived Corwith	Total number perishable loads in train	Number for Chicago proper	Number billed to connection direct via Belt	Number for NYC-NKP direct	Number for GT direct
Sept. 15....	11	472	253	172	28	19
16....	6	207	115	66	14	12
17....	7	249	134	89	13	13
18....	9	300	148	113	21	18
19....	8	307	188	86	9	24
20....	6	191	119	56	10	6
21....	7	260	159	86	4	11
22....	7	278	191	69	6	12
23....	7	226	143	58	7	18
24....	8	308	196	82	11	19
25....	6	212	116	77	12	7
26....	4	151	93	46	3	9
27....	4	162	100	51	3	8
28....	4	164	113	41	7	3
29....	5	185	133	46	5	1
30....	5	185	122	56	4	3
Oct. 1....	6	202	129	57	10	6
2....	6	245	167	71	5	2
3....	3	158	100	49	7	2
4....	5	193	130	55	3	5
5....	5	211	129	71	4	7
6....	6	256	180	58	6	12
7....	5	291	198	73	10	10
8....	7	265	164	84	11	6
9....	5	209	133	57	8	11
10....	2	73	45	25	3	.....
11....	4	150	104	37	8	1
12....	5	223	130	79	6	8
13....	6	284	184	88	9	3
14....	5	227	148	66	9	4
15....	7	266	145	102	11	8
Total..	181	7,110	4,409	2,166	267	268
Avg. per day..	6	229	142	69	9	9

NOTE.—7,110 cars fruit received in the 181 trains.
2701 cars fruit or 37.93 per cent moved thru on arrival.
4,409 cars fruit or 62.07 per cent billed Chicago proper on arrival.

EXHIBIT No

Witness: Mal

[fol. 521]

I. C. C. Docke

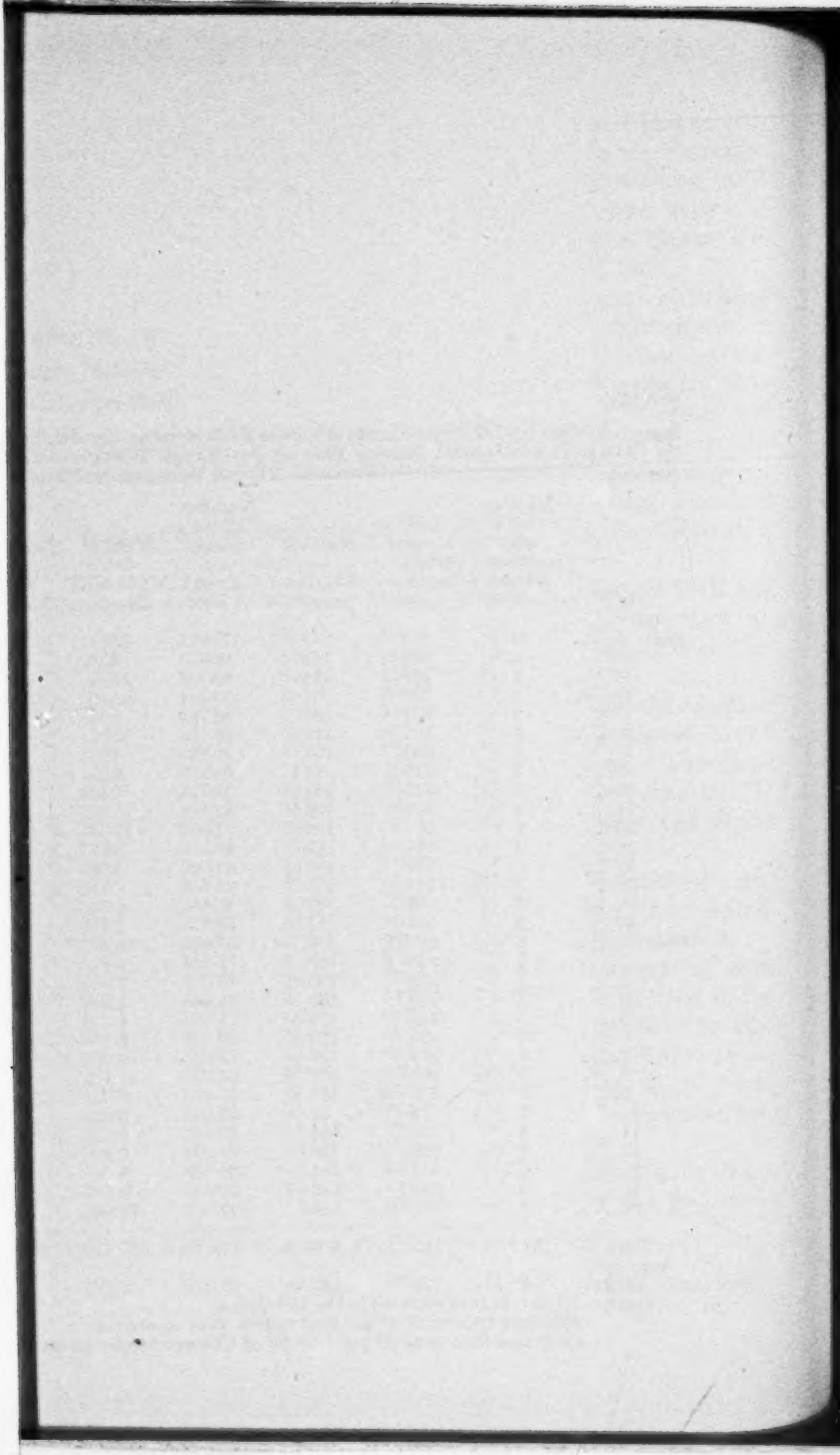
Statement Showing Disposition Made of Cars of Fruit Arriving Corwith Yard September 1
for Chicago Proper-Number Moving Through on Through Billing to Chicago Belt—NY
Re-icing at Corwith, Total Fruit Diversions, Number Unloaded on Team Track and Aucti

Date 1926:	Number trains with perishable arrived Corwith	Total number perishable loads in train	Number for Chicago proper	Number billed to connection direct via Belt	Number for NYC-NKP direct	Number for GT direct	Tota Corwith
Sept. 15....	11	472	253	172	28	19	15
16....	6	207	115	66	14	12	63
17....	7	249	134	89	13	13	63
18....	9	300	148	113	21	18	84
19....	8	307	188	86	9	24	95
20....	6	191	119	56	10	6	113
21....	7	260	159	86	4	11	150
22....	7	278	191	69	6	12	173
23....	7	226	143	58	7	18	256
24....	8	308	196	82	11	19	222
25....	6	212	116	77	12	7	350
26....	4	151	93	46	3	9	345
27....	4	162	100	51	3	8	330
28....	4	164	113	41	7	3	244
29....	5	185	133	46	5	1	231
30....	5	185	122	56	4	3	227
Oct. 1....	6	202	129	57	10	6	274
2....	6	245	167	71	5	2	296
3....	3	158	100	49	7	2	278
4....	5	193	130	55	3	5	283
5....	5	211	129	71	4	7	312
6....	6	256	180	58	6	12	226
7....	5	291	198	73	10	10	246
8....	7	265	164	84	11	6	264
9....	5	209	133	57	8	11	297
10....	2	73	45	25	3	.....	260
11....	4	150	104	37	8	1	227
12....	5	223	130	79	6	8	194
13....	6	284	184	88	9	3	240
14....	5	227	148	66	9	4	230
15....	7	266	145	102	11	8	260
Total..	181	7,110	4,409	2,166	267	268	6,848
Avg. per day..	6	229	142	69	9	9	221

NOTE.—7,110 cars fruit received in the 181 trains.
2701 cars fruit or 37.93 per cent moved thru on arrival.
4,409 cars fruit or 62.07 per cent billed Chicago proper on arrival.

to October 15, 1926, Showing Total Number Perishable Loads in Trains-Number -NKP-GT—Total Cars Fruit on Hand 8:00 A. M., Cars Requiring Additional n House, and Total Perishable on Team Track 8:00 A. M.

cars fruit on hand 8:00 A. M.			Cars requiring additional re-icing at Corwith	Total fruit diversions	Unloaded on team tracks	Unloaded at auction house
21st street	auction team track	Grand total				
119	42	176	33	88	8	5
153	49	285	52	96	6	10
210	58	331	51	96	3	9
192	26	302	37	123	7	.....
227	26	348	42	51	4	.....
321	58	492	64	116	5	24
329	55	534	77	181	9	9
289	51	513	62	156	16	7
227	39	522	128	163	12	13
289	35	546	75	71	8	6
298	13	661	44	100	32	.....
331	13	689	101	38	4	.....
366	33	729	41	139	11	17
359	47	650	130	157	20	16
345	57	633	109	141	21	12
373	52	652	63	126	13	12
360	63	697	132	133	19	11
351	28	675	72	184	40	.....
360	28	666	152	98	1	.....
381	48	712	101	23	19	21
305	46	663	143	170	33	9
310	55	591	179	91	29	12
319	50	615	88	80	25	14
349	47	660	119	160	21	8
311	25	633	148	148	79	.....
340	25	625	174	80	8	.....
357	38	622	39	31	33	10
361	34	589	104	51	18	9
355	44	639	81	176	29	9
338	52	620	76	84	21	14
356	53	669	115	154	20	9
9,581	1,290	17,719	2,832	3,505	574	266
309	42	572	91	113	18	8



[fol. 522] The delivery of perishable fruit to connecting lines through the Corwith Yard requires expedition and extra switching at a higher cost. Between September 15th and October 15, 1926, there was a total of 158 special trains handling 3523 cars of perishable fruit through the Corwith Yard to connecting carriers. This involved special service over and above the cost of interchanging regular traffic.

The average cost per car of interchanging deciduous fruit traffic between Corwith Yard and the Clearing Yard of the Belt Railway at Chicago was $1.02, as against 43¢ for regular traffic.

At Chicago deliveries are made to certain railways directly and not through the Belt Railway of Chicago Clearing Yard. This involves specialized service in the handling of deciduous fruit also. This involves the use of special runs to haul perishable freight and these special trains are utilized to some extent in bringing back freight to the Corwith Yard, but many cars are returned light. The average cost per car for this special service is $2.30; that is the switch engine service. The regular service maintained for delivering regular freight directly to the connecting carriers in Chicago involves an added cost of 86¢ per car. These figures are based upon costs covering all of the traffic, both perishable and general, between the Santa Fe, through the Belt Railway, and the Clearing Yard, in Chicago, between September 15th and October 15, 1926.

Deliveries are also made to the Grand Trunk Western line, otherwise than through the Belt Line Railway of the [fol. 523] Chicago Clearing Yard. All deliveries might be made through this yard were it not for the fact that it is convenient to deal with special runs to save time and insure connection where perishable freight is involved, and from September 15th to October 15, 1926, there were 81 special trips made in delivering 445 cars of perishable and 225 cars of other freight, which was accomplished at an expense of 94¢ per car. All of this freight could have been delivered through the Belt Line Railway in regular service at an expense not to exceed 26¢ per car, were it not for the necessity of quick delivery to avoid missing connections.

The handling of deciduous fruit coming at a time of the year when other business is normally heavy, puts an ex-

traordinary heavy burden on the carriers' service and the holding of it in readiness to protect this extraordinary movement.

In excess of 90% of serviceable engines are actually in service during the peak movement of deciduous fruit traffic, as against 75% of serviceable engines in use during the remainder of the year. All of this excess power is not attributable to the deciduous fruit traffic, but it is largely due to that fact.

The extraordinary development of the grape traffic in California has brought about the necessity for use of a great many refrigerator cars because of the short period of movement of the grapes.

At the end of the year 1919 we had in service 9802 refrigerator cars and since that time have purchased 10,500 additional cars. In addition, during the years 1925 and [fol. 524] 1926 it was necessary to increase the supply of refrigerator cars from other companies.

It is necessary to store a large number of these cars when the grape traffic is not moving.

A refrigerator car is not only the most expensive freight car built, exclusive of tank cars, but is expensive to operate by virtue of its construction for special service. It does not lend itself readily to the movement of miscellaneous freight.

The heavy demand for this class of equipment during the deciduous fruit movement, makes it necessary to operate these cars with a heavy empty return movement.

The document shown to me and marked as Defendants' Exhibit No. 128, shows that the percentage of empty westbound movement to the loaded and empty westbound movement rose from 58.27% in 1917 to 78.60% in 1926, the heavy increase in the percentage of empty cars moved, being coincident with the increased movement of grapes.

Thereupon there was admitted in evidence Defendants' Exhibit No. 128, which is in the following form:

[fol. 525]

EXHIBIT No. 128

Witness: Mahoney

I. C. C. Docket No. 19130

The Atchison, Topeka & Santa Fe Railway Company

Statement Showing Loaded and Empty Mileage of SRFD Cars, West-bound, between Chicago and California Points and per cent of Empty Mileage to Total, Years 1917-1918-1922-1923-1925-1926

Month	Year	Loaded	Empty	Total	Per cent empty
January	1917	2,613,464	3,300,052	5,913,516	55.81
	1918	2,092,986	236,984	2,329,970	10.17
	1922	2,148,356	2,792,863	4,941,219	56.52
	1923	2,883,670	6,699,770	9,583,440	69.91
	1925	2,296,748	4,870,345	7,167,093	67.95
	1926	2,347,688	10,046,333	12,394,021	81.06
February	1917	2,491,650	2,283,459	4,775,109	47.82
	1918	1,656,670	1,940,165	3,596,835	53.94
	1922	2,155,001	1,780,699	3,935,700	45.24
	1923	2,329,970	2,088,556	4,418,526	47.27
	1925	2,053,120	2,042,045	4,095,165	49.87
	1926	2,236,948	6,088,485	8,325,433	73.13
March	1917	2,992,195	6,055,263	9,047,458	66.93
	1918	2,101,845	1,517,138	3,618,983	41.92
	1922	2,555,879	4,046,440	6,602,319	61.29
	1923	2,967,832	6,219,158	9,186,990	67.70
	1925	2,513,798	4,400,808	6,914,606	63.65
	1926	2,527,087	5,698,680	8,225,767	69.28
April	1917	3,094,076	4,640,006	7,734,082	59.91
	1918	2,478,361	3,260,186	5,738,547	56.81
	1922	2,728,634	3,539,250	6,267,884	56.47
	1923	3,138,372	7,926,769	11,065,141	71.64
	1925	2,485,006	5,769,554	8,254,560	69.90
	1926	2,549,235	8,918,999	11,468,234	77.77
May	1917	3,240,252	5,253,506	8,493,758	61.85
	1918	2,883,670	108,525	2,992,195	3.63
	1922	3,003,269	2,848,233	5,851,502	48.68
	1923	3,377,570	7,260,114	10,637,684	68.25
	1925	2,575,812	4,932,360	7,508,172	65.69
	1926	2,571,383	7,178,167	9,749,550	73.63
June	1917	3,240,252	5,968,886	9,209,138	64.81
	1918	2,759,641	1,120,689	3,880,330	28.89
	1922	2,792,863	2,939,040	5,731,903	51.28
	1923	3,056,424	5,75$,836	8,808,260	65.28
	1925	2,374,266	4,540,340	6,914,606	65.66
	1926	2,279,029	6,921,250	9,200,279	75.23
July	1917	3,962,277	5,472,771	9,435,048	58.00
	1918	2,194,867	1,322,236	3,517,103	37.59
	1922	3,098,505	4,420,741	7,519,246	58.79
	1923	3,300,052	5,014,307	8,314,359	60.31
	1925	2,358,762	9,886,867	12,245,629	80.74
	1926	2,617,894	7,031,990	9,649,884	72.87
August	1917	3,426,296	2,947,899	6,374,194	46.26
	1918	2,141,712	3,798,382	5,940,094	63.94
	1922	3,067,498	1,315,591	4,383,089	30.02
	1923	3,032,061	5,935,664	8,967,725	66.19
	1925	2,338,829	8,799,400	11,138,229	79.00
	1926	2,883,670	13,707,397	16,591,067	82.62
September	1917	2,467,287	3,842,678	6,309,965	60.90
	1918	1,796,203	6,084,056	7,880,259	77.21
	1922	2,447,354	5,215,854	7,663,208	68.06
	1923	2,726,419	9,337,597	12,064,016	77.40
	1925	2,453,999	10,828,157	13,282,156	81.52
	1926	2,312,251	8,737,386	11,049,637	79.07

EXHIBIT No. 128—Continued

Witness: Mahoney

I. C. C. Docket No. 19130

The Atchison, Topeka & Santa Fe Railway Company

Statement Showing Loaded and Empty Mileage of SRFD Cars, West-bound, between Chicago and California Points and per cent of Empty Mileage to Total, Years 1917-1918-1922-1923-1925-1926

Month	Year	Loaded	Empty	Total	Per cent empty
October.....	1917	2,910,247	3,993,284	6,903,532	57.84
	1918	1,751,907	4,048,654	5,800,561	69.80
	1922	2,741,922	10,708,558	13,450,480	79.61
	1923	2,684,338	17,751,622	20,435,960	86.86
	1925	2,019,898	22,978,550	24,998,448	91.12
	1926	2,345,473	13,151,483	15,496,956	84.86
November.....	1917	3,231,393	2,996,624	6,228,017	48.12
	1918	1,563,649	4,487,185	6,050,834	74.16
	1922	3,554,754	8,332,078	11,886,832	70.09
	1923	2,956,758	12,480,398	15,437,156	80.85
	1925	2,276,814	12,617,716	14,894,530	84.71
	1926	2,724,024	7,920,125	10,644,329	74.41
December.....	1917	2,631,182	3,920,196	6,551,378	59.84
	1918	1,510,494	1,793,988	3,304,482	54.09
	1922	3,300,052	5,623,377	8,923,429	63.02
	1923	2,958,973	5,975,530	8,934,503	66.88
	1925	2,354,332	9,184,776	11,539,108	79.60
	1926	2,624,538	14,890,100	17,514,638	85.02
		Recapitulation			
	1917	36,300,571	50,674,624	86,975,195	58.27
	1918	24,932,005	29,718,188	54,650,192	54.38
	1922	33,594,087	53,562,724	87,156,811	61.46
	1923	35,412,439	92,441,321	127,853,760	72.31
	1925	28,101,384	100,850,918	128,952,302	78.21
	1926	30,019,400	110,290,395	140,309,795	78.60

[fol. 526] Cross-examination:

Referring to Exhibit No. 128, the last column shows the percentage increase of the empty west-bound movement of refrigerators to the total west-bound movement of refrigerators. In other words, 78.60 is the percentage which the empty west-bound refrigerator mileage bears to the total west-bound refrigerator mileage loaded and empty.

Our east-bound mileage of refrigerator cars from California is practically all loaded mileage. Normally, we are not moving empty refrigerator cars from California to the East.

The total east-bound refrigerator movement and the west-bound refrigerator movement, loaded and empty, is about the same. The total annual east-bound movement is approximately 140,309,795 loaded and empty car miles.

Between 1917 and 1926 there was a great increase in our empty refrigerator mileage west-bound. This was due to the increase in east-bound perishable traffic from California, which increased more rapidly than the west-bound transcontinental traffic and the increased number of cars in the service. If the west-bound transcontinental traffic were increasing at the same rate as is the east-bound perishable traffic, our empty car mileage west-bound would not be quite so great.

In December, 1926, the west-bound empty mileage of refrigerator cars was 14,809,100. This was a movement to California for storage purposes, to protect some deliveries and get cars off of the eastern and western lines, where we have no storage facilities. It is also to care for the return movement, loaded, east-bound, originating in the vicinity [fol. 527] of California. This is not entirely for the deciduous fruit traffic. Deciduous fruit traffic does not start appreciably until May.

I would not say that the west-bound movement of refrigerator cars in December was to take care of the east-bound deciduous fruit traffic. The cars move out to protect any perishable loading originating there to get cars off of our congested eastern and western lines. I am not willing to say that it is not to take care of the deciduous fruit movement, because we move them out in January and do not utilize them until June.

The Santa Fe handles about 30,000 cars of citrus fruit out of California annually. That movement is largely from December into May or June. We handle a considerable volume of winter vegetables from California, starting in January and extending up to April. We have to take cars to California to protect that loading.

Our citrus fruit and vegetable traffic on the Santa Fe is in excess of our deciduous fruit movement. We handle about 25,000 cars of deciduous fruits and about 22,000 of citrus fruits, and the balance vegetables and miscellaneous perishables, annually. The vegetables amount to about 10,000 to 12,000 cars.

On an average we have in storage on our entire system some five or six thousand refrigerator cars throughout the greater part of the year, out of a total supply of 17,414. About one-third of our refrigerator cars are in storage

and two-thirds engaged in hauling traffic. The only qualification of this statement is that in the fall that equipment handles a large movement of deciduous fruit, with the [fol. 528] result that practically all of our cars are busy.

At times of the year our box car equipment is largely in storage. We begin to store them the latter part of April or May, for the movement of the grain traffic. The traffic commences to move around the latter part of June or the first of July. It reaches its peak around the 15th or 20th of July.

The peak of the grain movement is in the latter part of August. During the grain moving season practically all of the box car equipment is being used.

We also accumulate and store box cars to care for the cotton and hay crops.

Our box cars are usually utilized continually in service throughout the year and this is also true of our gondola cars and livestock cars.

Prior to the increase in the deciduous fruit traffic during the past four or five years there was not, to my knowledge, a great deal of idle time for the refrigerator cars. Our refrigerator cars are more busily employed during the year in taking perishables from California at the present time than they were ten years ago.

V. S. Andrus was thereupon recalled and testified as follows:

Cross-examination:

The mileage of freight helper districts east-bound is relatively greater by a slight fraction on the Southern Pacific Los Angeles-El Paso route than on the San Francisco-Ogden route.

We have expedited service in banana trains. In fact, on the average the banana trains make a little better speed than the deciduous fruit trains. We run banana trains in expedited service for as many as ten cars. It is frequently necessary to put extra cabooses on our trains to take care of banana messengers who have free transportation privileges.

[fol. 529] It appears from Sheet 18 of Exhibit No. 109 that from about June 15th to November 20th, a period in excess of five months, there are only nine days upon which there were less than one hundred cars of fruit for eastbound movement and at times the movement reached very much higher figures. It also appears that after the tree fruits reach their peak and begin to taper off they merge into the early grape movement which finaly reaches a peak of several weeks in September or October. As a matter of fact, I do not know of any deciduous fruit movement in the United States that is nearly as great in volume as this deciduous fruit movement from California to the East. I do not know of any deciduous fruit movement which is so persistent.

After our cars leave Roseville there is no branch line service between there and Ogden.

[fol. 530] G. H. NELSON was thereupon called as a witness on behalf of the defendants, and, having been duly sworn, testified as follows:

I am the Manager of the Santa Fe Refrigerator Department. I have held that position since September, 1918. Prior to that time I was in the employ of the Santa Fe Refrigerator Department, the Santa Fe Refrigerator Dispatch Company and the Santa Fe Fruit Refrigerator Lines since 1898.

The document now shown to me marked for identification as "Defendants' Exhibit No. 130," shows the extent to which deciduous fruit, grapes, apples and citrus fruit were diverted during the years 1925 and 1928.

Thereupon defendants offered and there was submitted in evidence "Defendants' Exhibit No. 130," which is in the following form:

[fol. 531]

EXHIBIT No. 130

Witness: ———

I. C. C. Docket No. 19130

Atchison, Topeka and Santa Fe Railway Company, Santa Fe Refrigerator Department

Statement of Reconsignments and Diversions on Cars of Deciduous Fruits, Grapes, Apples, and Citrous Fruits from California During the Years 1925 and 1926

1925	Total shipments	Cars diverted	Number of times diverted								Total diversions handled
			Once	Twice	Three	Four	Five	Six	Seven	Eight	
Deciduous fruit	2,348	1,506	1,079	303	86	26	9	3	..	..	2,110
Grapes	27,395	20,440	17,265	2,740	380	47	7	1	..	..	24,114
Apples	53	25	18	6	1	0	0	0	0	0	33
Citrus	19,644	10,628	7,280	2,309	792	187	44	14	0	0	15,326
Total	49,440	32,599	25,642	5,358	1,259	260	60	18	..	..	41,583
1926											
Deciduous fruit	1,606	883	690	156	36	1	0	0	0	0	1,114
Grapes	21,642	16,685	13,126	3,005	429	74	23	21	6	1	21,010
Apples	199	106	61	34	10	1	0	0	0	0	163
Citrus	25,198	14,879	10,542	3,093	964	230	45	4	1	0	20,796
Total	48,645	32,553	24,419	6,288	1,439	306	68	25	7	1	43,083

[fol. 532] Certain commodities are excluded from refrigerator cars on account of damage for many reasons either to the car or freight by reason of loading. This is true of any freight liable to damage from dampness or rust, unless the car is perfectly dry, such as castings, iron, musical instruments, stoves and tin plate; also any freight, the odor of which may unfit the car for perishable freight, including empty barrels, previously used for beer or oil, bones, rancid butter (except in carload, under refrigeration), old empty butter-tubs, creosote, fertilizers, etc.; any rough or heavy freight that may damage the interior of the car, such as brick, car wheels, castings, lumber in carloads (except shingles and shooks in bundles), etc.; freight, which by its nature or method of loading may cause the lining or insulation of a car to become wet or contaminated. Many articles cannot be loaded in a fruit or vegetable refrigerator car either on account of the weight capacity, cubical capacity, restricted door opening or liability or injury to either car or commodity.

Prior to the war our westbound movement of refrigerator cars consisted of 80 to 82 or 83 per cent load, the balance empty. Since the war and since the Panama Canal has been constructed the situation is practically reversed and our empty mileage runs around from 75 to 80 per cent. The peculiar characteristic of the deciduous fruit traffic has affected the percentage of empty westbound movement of refrigerator cars, because of the increase in refrigerator car supply to haul the peak, which necessitates movement of that many more cars westbound. In addition, we have had to accumulate the cars with more rapidity and they cannot, therefore, wait for a load if there [fol. 533] is one during that particular period of the year. The empty westbound movement of refrigerator cars in December is chargeable to all the perishable traffic moving from California, including deciduous fruits. If the deciduous fruit were distributed as evenly over the year as citrus fruit, we could get along with about 6000 less refrigerator cars.

Cross-examination:

Exhibit No. 130 shows that in 1926 the number of cars of grapes diverted twice was 3,005 and the corresponding

number of cars of citrus fruit was 3,093. The number of cars of grapes diverted three times was 429, as compared with 964 in the case of citrus fruit.

Prior to 1917 the Santa Fe did not have much deciduous fruit traffic from California. The annual movement via the Santa Fe during that period was between 1,500 and 3,000 cars. In 1927 it was about 30,000 cars and in 1926, approximately 25,000.

[fol. 534] W. R. Armstrong was thereupon called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

I am General Superintendent of the Los Angeles & Salt Lake unit of the Union Pacific Railroad. I have been in the railroad business about thirty-seven years, twenty-five of which was in the engineering and construction department and twelve as Superintendent and General Superintendent.

On this line between Los Angeles and Salt Lake City there are numerous grades requiring the use of helper service. Beginning at Los Angeles there is a helper district from San Bernardino to Summit of 25 miles, another from a point near Sands of 19 miles, another from a point near Carp to Crestline and another between Ogden and Wahsatch.

The Los Angeles & Salt Lake unit of the Union Pacific System has very heavy grades and curvatures. There are helper grades on this unit requiring three helpers on ordinary tonnage trains between San Bernardino and Summit and three helpers on the grade near Sands.

That portion of the road near Crestline runs through a canyon with heavy grades and sharp curves, involving heavy cost of construction, including sixteen tunnels and heavy rails.

Between Los Angeles and the Missouri River there are three high mountain ranges which are crossed, involving heavy operation costs.

The perishable fruit schedule on the Union Pacific System from Colton to Chicago is 154 hours. Colton is the [fol. 535] assembling point. In gathering up deciduous

fruit cars the Los Angeles and Salt Lake unit receives deliveries from connections at Los Angeles and pick-ups at various loading stations between Los Angeles and San Bernardino and pick-ups at Colton.

The fruit from the Los Angeles connections, the pick-up service between Los Angeles and San Bernardino and that received from connection in Colton is consolidated into one or more trains in San Bernardino. The average number of cars handled in this fruit block east of San Bernardino is about 35.

It is necessary to ice the deciduous fruit cars before leaving San Bernardino and again at Las Vegas and Milford. These cars must also be inspected.

On the Union Pacific System these fruit trains are broken up necessarily at Laramie, Wyoming, for the purpose of taking out shipments to Denver and to connections at that terminal.

The trains are also broken up at North Platte, Nebraska, where shipments to stations south of that point are taken out. At Council Bluffs these trains are broken up to release them for delivery to various connecting railroads.

It is also necessary to switch out of these shipments cars of fruit that have been ordered for diversion, and to switch into them other cars previously held out and diverted and then ready for shipment.

The nature of the territory through which the Los Angeles & Salt Lake unit of the Union Pacific runs has difficult water conditions. There are some 47 stations for which water supply is secured largely from wells. At 28 of these stations the wells range from 300 to 900 feet in depth. At eleven of these stations it has been necessary to treat the water. In addition, it has been necessary, during certain periods of the year, to purchase water from [fol. 536] Salt Lake City. In some cases large pumping plants and long pipe lines have been necessary for water supply.

There have been heavy expenditures on the Los Angeles & Salt Lake Railroad because of water and flood conditions.

Weather conditions, particularly in Wyoming, in the winter have been exceedingly costly and have necessitated the construction of concrete snowsheds.

Cross examination:

There are also favorable operating conditions on the Los Angeles & Salt Lake unit and the Union Pacific System. All of the deciduous fruit which we originate, originates at main line points. There are two branches in Southern California where some of it is originated. So far as I know, all of the deciduous fruit originated by the Los Angeles & Salt Lake Unit of the Union Pacific in California comes from main line points. No branch line service is involved in the shipment of deciduous fruit in California by this unit. After the fruit arrives at Salt Lake City it passes over main line trackage entirely to Ogden, and after it leaves Ogden over main line trackage to Granger. At Salt Lake City the Union Pacific picks up deciduous fruit brought in by the Western Pacific, and at Ogden brought in by the Southern Pacific. At Granger the Union Pacific picks up deciduous fruit originating in the Northwest. From Granger to the Missouri River there is a hugh stream of this consolidated deciduous fruit traffic moving over our main line tracks. That is a favorable operating condition.

As a general rule, when we are shipping deciduous fruit from California to Eastern points, we have no snow trouble. Our weather conditions are usually more favorable to [fol. 537] economical operation during the period of deciduous fruit movement.

The total movement of deciduous fruit on the Los Angeles and Salt Lake Unit of the Union Pacific to transcontinental territory was 680 cars in 1926. That would make about 25 or 30 fruit trains if it was concentrated, but, of course, it was not. When we do not have enough cars to make reasonably complete tonnage of freight, we fill out with manifest or dead freight.

There is not any peak to the deciduous fruit movement on the Los Angeles and Salt Lake Unit. We have some eastbound empty car haul in October. The automobile cars largely go back empty. The stock cars and oil cars have an empty mileage about equal to their loaded mileage.

When our manifest trains move over the Union Pacific System from Ogden to Omaha, the stuff to Colorado points and short of Topeka is switched out at Laramie. That

operation is identical with the operation performed in connection with the fruit traffic. When the manifest train arrives at North Platte, Kansas City stuff is switched out. That operation is about the same as the operation portrayed in connection with the deciduous fruit business.

H. M. EICHOLTZ was thereupon called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

I am Assistant General Manager of the Chicago & Northwestern Railway Company. I have had 37 years railroad experience as telegrapher, train master, division superintendent, assistant general superintendent and assistant general manager, which position I have held for a little over [fol. 538] two years. The Chicago & Northwestern Railway has a line extending from Chicago to Omaha. This is a double track line. It also has extensive terminal facilities and yards in the City of Chicago. Our company gets this deciduous fruit traffic at Council Bluffs. The California deciduous fruit moves in heaviest volume during the months of September and October and is received by the Chicago & Northwestern Railway from the Union Pacific Railroad at Council Bluffs Transfer, Iowa, and from that point is transferred by switch engines to the yards of the Chicago & Northwestern Railway at Council Bluffs, a distance of 1.86 miles through the center of the City of Council Bluffs and over many railroad and street crossings at grade.

Production centers are estimated and believed to be conservatively determined.

There is considerable congestion at Council Bluffs on account of there being no facilities at the transfer suitable for making up road trains for the Chicago & Northwestern [fol. 539] Railway, the cars of fruit not being delivered in trainload lots by the Union Pacific Railroad. To add to the difficulty of handling at Council Bluffs, routing instructions require splitting up from among 3 to 7 lines. During the first ten days of September an actual count of the trains from the Union Pacific and the assignment of the cars of

fruit in those trains shows 131 trains with 4,405 cars were distributed as follows:

6 trains, each split between 3 roads;
17 trains, each split between 4 roads;
35 trains, each split between 5 roads;
53 trains, each split between 6 roads;
20 trains, each split between 7 roads,

so that even though full trains of fruit of fairly heavy tonnage for one engine are received from the Union Pacific Railroad, they are broken up into small lots to be handled east from Council Bluffs by three to seven different railroads. By reason of this split it is necessary for the Chicago & Northwestern Railway to hold most of their trains to consolidate in them cars from two or more Union Pacific trains and this requires the Chicago & Northwestern Railway to mark time on their allotment of 31 hours from the time of receipt from Union Pacific Railroad of the first of two or more consignments, necessitating a much more expedited service on these consolidated trains.

The time schedule required of the Chicago & Northwestern Railway is 31 hours out of the total schedule from concentrating points in California to Chicago. Of this 31 hours, 2 hours is required for the transfer and make up into trains at Council Bluffs, 2 hours for icing at Clinton, Iowa, and 2 [fol. 540] hours for delivery at Chicago, leaving 25 hours running time, making an average running speed of 19 miles per hour necessary. This is a very exacting schedule. The small lots received and the high schedule speed do not permit full tonnage to be hauled in these trains; in fact, during the month of September, 1926, there were operated 46 trains of fruit averaging 462 tons light of even the fruit train rating, because it was arbitrarily necessary to run the trains in order to maintain our allotted time and with no fruit or other cars available with which to fill out.

During the month of September, 1926, there were 213 trains delivered to Chicago & Northwestern Railway at Council Bluffs, in which there were 7,545 cars of fruit, 7,511 of which were deciduous fruit. These 7,545 cars carried a total fruit tonnage of 314,412 tons, and a total train tonnage of 480,799 tons. This shows that these trains were

light of the full tonnage rating of the trains to the extent of 104,951 tons.

There was an average of 35.4 cars of fruit in each train. Had these fruit trains had the full tonnage of 2,750 tons there would have been a saving of 38 trains, or 18,506 train miles east. The predominating tonnage is east at this time. Hence the 38 extra trains east require the same number of trains running light west to return the crews and provide for additional fruit trains, making 18,506 extra train miles west. This means a total of 37,012 train miles lost on account of the necessity of operating faster than 40 hours from Council Bluffs to Chicago, as that is the time required for a train of 2,750 tons.

It is also necessary to maintain additional switch engines daily at Council Bluffs to handle fruit, not as the result of [fol. 541] the extra business, but to avoid detention and maintain the 31 hour schedule to Chicago.

This schedule necessitates a speed of 19 miles per hour of deciduous fruit trains. This is faster than the economical speed of freight trains which is between 12 and 15 miles per hour, and the increase in speed is secured at greatly increased cost per train mile. In addition, there is a necessary reduction in train load to enable us to maintain this speed and a resulting 18.8 per cent reduction in the output per train mile.

The excessive train miles required to move deciduous fruit results in a corresponding movement of trains westward light of the usual westbound tonnage to balance the power, that is, to return the engine and crews to the west end for other trains of fruit, making a grand total of 228,890 excess train miles.

From Council Bluffs the deciduous fruit is carried across the states of Iowa and Illinois, a distance of 486.5 miles to Chicago, on a double track main line. This crosses the Mississippi River Valley at right angles. It is necessary on this route to operate over a continuous succession of short choppy undulating grades, only a few of them very long or steep. In no locality is economical use of helper service possible, nor is there any chance of reducing the grade, except at prohibitive cost. It is a difficult line to operate economically, and is at the same time most con-

ducive to heavy maintenance cost. From Council Bluffs to Clinton there is 2,250 feet of rise and fall, and 3,008 degrees of curvature.

Upon completing our haul, we reach the congested Chi- [fol. 542] cago terminals, the operations in which constitute one of the most expensive which we are forced to perform, and for which we receive no compensation above the line haul rate. It requires special handling at every point, as delays, or the handling in regular schedule transfer service would invariably involve claims for delay on account of market fluctuations.

At Proviso Yard, after fruit trains have been checked for reconsignments, hold orders, etc., they are switched to tracks for delivery to eastern connections through the Indiana Harbor Belt Railroad, to our hold yard in the City of Chicago (known as California Avenue), Clinton Street, Morgan Street, or other team tracks in accordance with billing instructions, and then moved by transfer crews to these destinations. Expedited terminal service is required on all fruit which involves the time of many crews, over and above what would be necessary in its movement if it were ordinary freight.

From Proviso Yard our road goes to 40th Avenue, Chicago shops and California Avenue yard. East of that is Clinton Street and near the lake is a station called State Street. South of the main line there are stations known as Wood Street and 16th Street. All the trackage between the Des Plaines River and Clinton Street is elevated, excepting the line from Ada Street, a distance of about two miles. The line from California Avenue south to Wood Street and east to 16th Street is also elevated. This section is considered a congested area. This is part of the congested Chicago switching district.

The handling of reconsigning orders on fruit is an expensive task, for which no charge is paid by shipper or con- [fol. 543] signee. During 1926, the following reconsignments were effected on deciduous fruit upon orders of shippers or consignee, many of which might have been second, third, or even more diversions on the same car.

En route Council Bluffs to Chicago	762 cars
At Proviso Yard	1,927 cars
At California Avenue hold yard	6,398 cars
At Clinton Street team track	226 cars
At Morgan and Sixteenth Streets team tracks	1,128 cars
Total	10,441 cars

Reconsigning orders after being received by telephone or otherwise, are written on reconsigning forms. If the cars are en route we wire reconsigning order to Assistant Superintendent, Clinton, Iowa, for execution, and telephone the same order to our agents at Proviso Yard and California Avenue hold yard. These orders are confirmed by letter.

All cars reconsigned are indexed in a record book with proper file reference so that the file can be readily located.

These transactions at Clinton, Proviso Yard and California Avenue hold yard, involve careful scrutiny of all way bills and the comparison of car numbers on way bills with reconsigning orders, there being at times as many as 250 reconsigning orders on hand at one time. This reconsigning feature in connection with the handling of deciduous fruit alone, requires the Railway Company to employ an expensive clerical force, as well as additional telegraph and telephone facilities to handle promptly and often then at the exclusion of, or delay in the handling of its other regular business because of the great importance of the railway [fol. 544] company protecting itself against penalties. High-class employees, paid a little higher rate of pay than the ordinary clerk are required for this work. Twenty-five per cent of all the reconsignment orders effected by our line on carload freight was on deciduous fruit. In other words, during the year 1926, we effected reconsignment orders on 10,441 cars of deciduous fruit, or on 28 per cent of all the cars of fruit received through Council Bluffs, including both deciduous and citrus, as against effecting reconsignment orders on 1.8 per cent of all other cars handled during the year, most of which we receive payment for. This indicates the preferred attention on part of the railway in handling deciduous fruit, as compared to other commodities and for which we receive no compensation.

Cars of deciduous fruit reconsigned while in hold yard at California Avenue, or team tracks at Clinton Street and

at Morgan Street, when the destinations involve delivery to eastern railroads, involve a very intricate and expensive service for the reason that 90 per cent of these diverting orders are received after 11:00 A. M. and cars must then be switched out from among many other cars, billing changed and checked and cars must all depart from California Avenue by 12:30 P. M. in order to reach connecting lines in time ot leave on their expedited trains that same evening.

Of the fresh fruit from the West arriving at Chicago during the year 1926—62 per cent was delivered to Eastern connections in the first instance; 2 per cent was destined to points north of Chicago, and 36 per cent for delivery to consignees at Chicago.

Included in the above 36 per cent were 8,256 cars of de- [fol. 545] ciduous fruit arriving at our various hold yards and team tracks in Chicago, which were disposed of as follows:

4.5 per cent unloaded.

54.6 per cent reconsigned to eastern points.

4.9 per cent reconsigned to other team tracks.

23 per cent reconsigned to fruit auction located on A. T. & S. F. rails.

5.7 per cent reconsigned to various cold storage houses in Chicago.

7.3 per cent reconsigned to various stations on our line, north and west of Chicago.

That refers to the second operation; after arriving at Chicago Terminal there may have been other reconsignments.

One of the elements of service is the icing of fruit while being held for disposition, or unloading.

The detention to deciduous fruit at our California Avenue hold yard for 15 days in September, 1926, averaged 3¾ days per car. This detention is for the shippers or consignees convenience. During the year 1926, due to this holding of cars, we had to reice at California Avenue hold yard 496 cars the second time; 205 cars the third time; 51 cars the fourth time; 17 cars the fifth time, 11 cars the sixth time; 1 car each the seventh and eighth time, and one car the ninth time during their sojourn in that yard.

We have actively attacked the problem of freight claims by discipline, lectures, moving pictures, impact recorders, etc., which has resulted in a reduction of claims on traffic in general; nevertheless, in 1926, we paid out $1,159,734 in freight claims of which 9.5 per cent was on fresh fruits other than citrus, the largest proportion being on Califor- [fol. 546] nia deciduous fruits. The claims of the latter were about 20 times as heavy per net ton as they were for all other car load freight.

The Chicago & Northwestern Railway with other Western Trunk Lines has been severely affected by lack of revenues. In 1926 the Chicago & Northwestern Railway earned 4.21 per cent on its book value plus material and supplies and cash as of December 31, 1925, as against 4.45 per cent for the Western District as a whole, 5.48 per cent in the Southern District, 5.68 per cent in the Eastern District, and 5.13 per cent for the United States as a whole.

Increases in pay which have been forced on this company in the three years since 1923 have resulted in the net increase up to 1926 of 2.4 per cent in the rate per hour of all employees. We have been obliged to grant certain other increases since 1926 which will further increase our payroll $974,700.00 per year.

[fol. 547] Cross-examination:

That portion of our system which has the highest density of traffic is between Milwaukee and Chicago. The next highest traffic density is on the Chicago-Omaha portion of our system. The bulk of this deciduous fruit which is received at Council Bluffs moves entirely over our main line to Chicago.

Our Chicago terminals have been congested for a considerable period of time. There has been a gradual increase in the congestion there. It was seriously congested in 1923, and at that time the terminal facilities there were inadequate.

The proviso Yard has been inadequate for at least five or six years; for about ten years.

In the past three years we have spent upwards of $5,000,000 in additions to the Proviso Yard. It is about three years since substantial additions to the Proviso Yard have

been made. At the present time we are enlarging the terminal yard at Proviso at a cost of about $15,000,000, one-third of which has already been expended. Exclusive of this, it has been more than ten years since the Proviso Yard was substantially enlarged.

28% of all the fruit received through the Council Bluffs gateway is deciduous fruit. 25% of all total reconsigning orders of all system carload freight was deciduous fruit during the year 1926.

The most economic delivery of fruit to connecting carriers is through the Proviso Yard.

Our traffic between the Missouri River and Chicago is predominantly eastbound. We have a heavy livestock movement eastbound to Chicago over our line and there is a considerable empty car haul westbound in connection with that movement.

[fol. 548] The livestock schedule from South Omaha stockyards to Union Stockyards, Chicago, is 36 hours.

Our fresh meat schedule from Missouri River to Chicago is slightly faster than the fruit schedule.

In view of the expedited character of the schedule of fresh meat trains, it is below the full engine rating capacity to about the same extent as the fruit trains, but they come at a season when there is less interference en route, permitting us to make a faster schedule than with the fruit trains. We take this traffic into the Proviso Yard before making delivery to eastern connections. That is the same Proviso Yard to which I was referring in discussing the fruit traffic.

Grain, Potatoes, citrus fruits and cantaloupes are frequently held for inspection and reconsignment for delivery in Chicago.

Counsel for the carriers stated that the carriers do not intend to use the icing service in justification of the freight rates on deciduous fruits, because that service is properly included in the refrigeration charge, and it is not intended to create thte inference that such service is really a matter of expense on the freight service.

Thereupon W. S. Cooper was called as a witness on behalf of defendants, and having been duly sworn, testified as follows:

I am an employee of the receivers of the Chicago, Milwaukee & St. Paul, in the capacity of Assistant to the General Manager. I have had over forty years railway experience. I have been a telegraph operator, train master, superintendent, assistant general superintendent, general superintendent and assistant to general manager.

[fol. 549] This railway operates a line from Council Bluffs to Chicago.

So far as this line is concerned it serves the same general territory as the Chicago Northwestern.

The St. Paul does not receive fruit traffic in Council Bluffs in solid trains. This traffic is received and handled by the St. Paul Railway in the same manner as Mr. Eicholtz has described it is handled by the Chicago Northwestern Railway.

The movement of this fruit requires special or extra train service on faster schedules and with lighter train loads than for common or non-perishable freight and requires extra service switching cars for re-icing. The average schedule for non-perishable freight, Council Bluffs to Chicago outer yard, is approximately 72 hours, as contrasted with 29 hours for fruit trains.

The tonnage rating for trains run to handle deciduous or other California fruit, is 75% of the rating for non-perishable freight, but this rating is further reduced on account of delays at Council Bluffs, or en route. The reduced tonnage of deciduous fruit varies from 25% to 80% of non-perishable freight, train rating.

During the first seven days of August, 1926, thirty-three trains were run with a total of 314 cars of fruit on an average of 9.5 cars fruit per train. The tonnage of these trains varied from 770 tons, or 25.6%, to 2415 tons, or 80.5% of common freight train rating.

Of 314 cars of fruit moved from Council Bluffs to Chicago between August 1st and August 7th, eighteen were destined to Chicago for team track delivery, five for fruit auction house, 288 for points beyond Chicago and three were held for disposition. The cars destined for Chicago re-
[fol. 550] quired extra service of engine crews at various times to place the fruit on tracks for inspection or unloading. Of these eighteen cars fifteen were later reconsigned. The eighteen cars required re-icing from one to three times each before being disposed of.

The cars destined for fruit auction house required extra or special service of engine crew for one or two cars of deciduous fruit, or an average of about three hours twenty minutes each time. The cars of deciduous fruit destined to points beyond Chicago are delivered to Indiana Harbor Belt on an average of about 10.3 cars per train and require extra or special service of locomotives.

Cars of fruit in through movement destined to points beyond Chicago are handled from Bensonville Yard, which is the outer yard of Chicago, Milwaukee & St. Paul terminal to Indiana Harbor Belt Railway, Norpaul Yard, a distance of three miles.

Our records indicate that claims paid on citrus fruit in the year 1925 amounted to an average of $2.88 per car handled, equal to 4.17% of the revenue, and claim payments in the same year for other traffic, including California deciduous fruit, amounted to an average of $3.43, or 4.84% of the revenue.

Thereupon J. F. Porterfield was called as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I am an employee of the Illinois Central System and have been for between thirty-five and forty years. I have been General Superintendent of Transportation for twelve years. Prior to that time was General Superintendent, Superintendent, Train Master, Chief Clerk, Telegraph Operator and station laborer.

[fol. 551] The Illinois Central has a railroad from Council Bluffs to Chicago.

The handling of deciduous fruit from California is very expensive, substantially in excess of the average, and higher than for less perishable and heavier loading commodities such as apples and citrus fruit. This is due, first, to the faster schedule requiring reduced train load; second, special service; third, low net car load; fourth, special supervision of refrigeration and ventilation; fifth, reconsigning; and, sixth, loss and damage.

This traffic is handled on a very fast schedule. Our maximum portion of the through time schedule being thirty-one

hours from receipt at Council Bluffs to delivery at intermediate switching points to Chicago outer yards. If they go on through schedule, faster time is required. The faster schedules are twenty-six and one-half and twenty-eight hours. This schedule represents about 70% of that on which tonnage freight is handled. This faster schedule reduces the train load to an average of about 65% of the locomotive rating.

The California fruit traffic utilizes about 55% to 71% of the locomotive rating, varying according to the volume of traffic, necessity for regaining time lost and weather conditions.

The lowering of train loads results in operating one-third more trains than would be required to handle non-perishable commodities. The handling of this perishable traffic requires a great deal of special service. It requires additional yard engines, forces and employees.

[fol. 552] There is a substantial number of reconsignments at Council Bluffs. For this reason additional car inspectors and repair men from the repair yards and train yards to expedite the movement of deciduous fruit, and at night call these men out at overtime rates to inspect, oil and make running repairs to cars without incurring the delay incident to switching to the repair yards.

At Waterloo, Iowa, it is necessary to employ an additional yard engine and force, car inspectors and repair men, in order to expedite re-icing and reclassification of reconsigned cars. This is also true of Freeport, Illinois.

The outer yard at Chicago is Hawthorne, where we make deliveries to the Indiana Harbor Belt before reaching our outer yard.

At our Chicago terminal we employ additional yard engines and force to make reconsignment and expedite the delivery to Indiana Harbor Belt. At Hawthorne an additional yard engine is employed to make deliveries to the Belt Railway, switch out cars held for reconsignment and make deliveries to the Produce Terminal.

At South Water Street at Chicago it is necessary to employ from one to two additional engines in order to make special deliveries to connecting lines. These special deliveries are very expensive.

In some cases it is necessary to use other than freight routes involving the payment of exceedingly high trackage charge in addition to yard engine expense. The total cost ranges from $14.24 per trip to a favorably located [fol. 553] yard, to $61.74 to a more distant yard reached via a circuitous and complicated route. That is the cost per train for delivery at an average of four cars per trip, which would make the cost vary from $3.55 to $15.40 per car.

The Chicago Produce terminal cars require special deliveries. This service is largely in a congested area of the Chicago district.

Deciduous fruit is loaded very low. The tariff minimum for deciduous fruit, not including apples, is 26,000 pounds. A check made of 2,912 cars moved during September, 1926, showed an average of 26,600 pounds. The cars handling this traffic are returned empty. The light weight of the cars used averages about twenty-six tons. Therefore, without including the weight of ice, we have the very low revenue load of 13.3 tons to a total gross tonnage hauled of 65.3, including the empty return, or a net revenue load of 20%.

On citrus fruit the net revenue per carload is 26%, apples 27%, lumber 52%, coal 57%, corn 63% and the average for all carload freight 52%.

The following are the average freight earnings per car: Deciduous fruit 26,600 pounds, $460; citrus fruit 36,000 pounds, $558.00; apples 40,000 pounds, $600.00.

Mr. Eicholtz gave a very accurate description of handling reconsignments and diversions of fruit traffic and the procedure upon our line is substantially the same as described by Mr. Eicholtz.

[fol. 554] Cross-examination:

I think that the fact that the fruit delivered by the Union Pacific at Omaha is divided among three carriers, primarily for further movement to Chicago and beyond, instead of to one carrier, is due to the very active and persistent solicitation of the Missouri River lines.

Our line handles considerable banana traffic and my recollection is that the average load amounted to about

23,000 pounds. The banana trains receive expedited service. They come largely from New Orleans, about 100 car trains, and they go right through in full train loads.

The average running time to Chicago is fifty-five hours, the same as our dispatch freight schedule. That amounts to seventeen miles per hour and is the minimum schedule. We can run trains of 100 cars of bananas at an average running time of seventeen miles per hour.

We have a low grade line south, no hills and no difficult operating conditions, except a little difficult operating condition between Fulton, Kentucky, and Cardondale, Illinois.

We do not move any volume of cocoanuts from Gulf ports to Chicago.

Thereupon GERRIT FORT was called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

I am Vice-President of the Boston & Maine Railroad, in charge of traffic. I have held that position for seven or eight years. I am familiar with the handling of deciduous fruits on the Boston & Maine Railroad. My railroad experience extends over a period of more than forty years.

The deciduous fruit traffic that goes over the Grand Trunk and the Canadian National Railroad reaches the Boston & Maine at White River Junction, which is 140 [fol. 555] miles distant from Boston. Some of it also goes to Rotterdam Junction, a connection with the New York Central and Mechanicsville, a connection of the Delaware & Hudson, a distance of 209 and 187 miles from Boston, respectively.

Grapes make up the largest volume of tonnage in deciduous fruits. In 1926 the Boston & Maine delivered 5000 cars of California grapes at Boston. In 1926 we handled 5157 cars of grapes, of which 4732 were California grapes and the remainder from New York State, Pennsylvania, Michigan and Arkansas.

Of these grapes about 70% were juice grapes and about 30% table.

The Boston & Maine handled approximately 95% of this traffic in road haul service. The Boston & Maine markets

absorb between 9% and 10% of the total juice and table grape movement from California and other points.

In 1923 the total movement was 3612 cars, of which 3212 were California grapes; in 1924 the total movement was 4689 cars, of which 4339 cars were California grapes. In 1925 the total movement was 5480 cars, of which 5355 were California grapes.

This traffic is handled by the Boston & Maine in fast freight trains, usually with a tonnage rating below normal to maintain the required schedule. The route from the Hudson River gateways requires operations through the Hoosac Tunnel. This tunnel is electrified, requiring a duplication of motive power. On this route there are two substantial grades through the Berkshire Mountains, resulting in limiting the tonnage and requiring helper service for [fol. 556] a distance of about 40 miles. The traffic from Canadian National route moves over a heavy ruling grade, also requiring one or more helpers.

The switching service required on the delivery of this fruit is very exacting. The auction companies require that the cars be placed about five o'clock in the morning. The cars of fruit must be switched quickly through interlocking territory, crossing main lines, carrying a dense passenger traffic, and as a result of this condition fruit arriving in the early hours of the morning has to be handled specially and given preference over everything else.

Due to the nature of the traffic we are obliged to maintain two switching crews ordinarily, which would not be required except for this traffic. And during the grape season two more switching crews must be added. The expense of a switching crew may be roughly figured at $100 per eight hour day. This switching is extra switching, beyond what would be required for other traffic.

In addition to taking cars out of trains the deciduous fruit cars must be switched out of storage tracks as ordered. This applies primarily to the grape traffic but extra switching is also required to a lesser extent in other fruits.

During the grape season a large amount of bulk delivery tracks must be assigned for the exclusive use of that traffic. The trade requires that these deliveries be concentrated to one point to facilitate marketing.

[fol. 558]

The High and Low Selling Prices of Grapes, Separated as Between Juice Grapes and Ta

(These Quotations were Taken from Market Letter Published by S. J. Shallow & Co

Representing Actual

	1922				1923				
	Lugs Juice grapes		Crates Table grapes		Lugs Juice grapes		Crates Table grapes		Ju
September	$.80	$3.50	$.90	$4.20	$.50	$3.00	$.75	$3.80	$.5
October...	.45	4.70	1.00	4.90	.25	3.25	.75	3.60	.5
November	.20	3.15	.50	3.70	.30	3.45	1.00	4.70	.6
December.....					.65	2.55	.95	3.40	.5

The Above Figures Converted to Prices p

	1922				1923				
	Lugs Juice grapes		Crates Table grapes		Lugs Juice grapes		Crates Table grapes		Jui
September	$2.78	$12.50	$3.46	$16.15	$1.79	$10.71	$2.88	$14.61	$1.7
October...	1.61	16.78	3.85	18.84	.89	11.61	2.88	13.85	1.7
November	.71	11.25	1.92	14.23	1.07	12.32	3.84	18.07	2.1
December.....					2.32	9.11	3.65	13.07	1.7

[fol. 558]

EXHIBIT 145

Witness: Fort

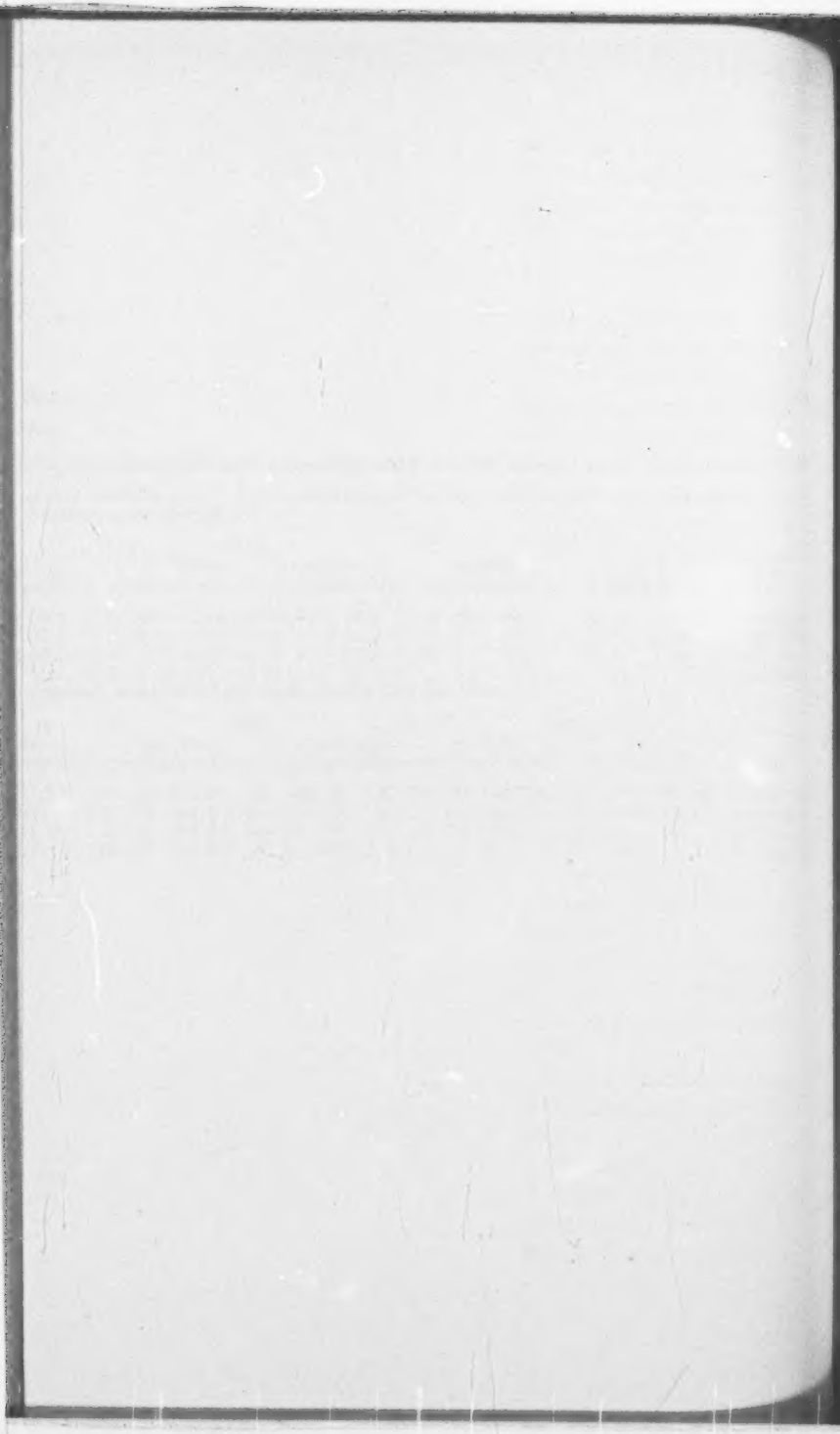
The High and Low Selling Prices of Grapes, Separated as Between Juice Grapes and Table Grapes, during September, October, November, and December from Year 1922 to 1926, Inclusive

(These Quotations were Taken from Market Letter Published by S. J. Shallow & Company, 46 Clinton Street, Boston, Mass. The Prices Quoted are Compiled from Auction Reports Representing Actual Sales Made in Boston Each Day)

	1922				1923				1924				1925				1926			
	Lugs Juice grapes		Crates Table grapes		Lugs Juice grapes		Crates Table grapes		Lugs Juice grapes		Crates Table grapes		Lugs Juice grapes		Crates Table grapes		Lugs Juice grapes		Crates Table grapes	
September	$.80	$3.50	$.90	$4.20	$.50	$3.00	$.75	$3.80	$.50	$2.95	$.65	$3.55	$.70	$3.50	$.75	$3.90	$.45	$2.90	$.60	$3.70
October...	.45	4.70	1.00	4.90	.25	3.25	.75	3.60	.50	3.70	1.05	3.35	.40	2.75	.65	2.80	.50	2.80	.55	3.25
November	.20	3.15	.50	3.70	.30	3.45	1.00	4.70	.60	3.40	1.00	3.80	.24	3.15	.40	2.60	.55	2.95	.75	3.25
December					.65	2.55	.95	3.40	.50	2.85	1.40	3.55	.40	2.55	.65	3.70	.50	2.70	.85	3.10

The Above Figures Converted to Prices per 100 Lbs., Using 28 Lbs. per Lug and 26 Lbs. per Crate (Crates Range from 25 to 28 Lbs.)

	1922				1923				1924				1925				1926			
	Lugs Juice grapes		Crates Table grapes		Lugs Juice grapes		Crates Table grapes		Lugs Juice grapes		Crates Table grapes		Lugs Juice grapes		Crates Table grapes		Lugs Juice grapes		Crates Table grapes	
September	$2.78	$12.50	$3.46	$16.15	$1.79	$10.71	$2.88	$14.61	$1.79	$10.54	$2.50	$13.65	$2.50	$12.50	$2.88	$15.00	$1.61	$10.36	$2.30	$14.23
October...	1.61	16.78	3.85	18.84	.89	11.61	2.88	13.85	1.79	13.21	4.03	12.88	1.42	9.82	2.50	10.76	1.79	10.00	2.11	12.50
November	.71	11.25	1.92	14.23	1.07	12.32	3.84	18.07	2.14	12.14	3.85	14.61	.86	11.25	1.54	10.00	1.96	10.54	2.88	12.50
December					2.32	9.11	3.65	13.07	1.79	10.17	5.38	13.65	1.42	9.11	2.50	14.23	1.79	9.64	3.26	11.92



At delivery tracks it is necessary to employ additional supervising force to handle the traffic at the Boston Ter-
[fol. 557] minal; including nine delivery clerks during the grape season, six additional men, and the railroad police department adds from ten to 20 special officers. During the past grape season the expense of these special officers amounted to $5,589.30. In addition, the regulation of traffic at the fruit houses required extra help three days per week at a cost of $891.20.

Another unusual expense attributable to the fruit traffic is the heating of the houses. Last year this cost approximately $3,000.00.

It will not be disputed that the development of this industry in California has contributed largely to the growth of the state. California has grown and has drawn upon the population of the eastern states. It is obvious that this increase in population is the reason for the present prosperity of the transcontinental railroads. When the people of California travel the transportation tolls accrue to the California lines, and this is also true of everything else they consume, food stuffs, clothing, furniture and everything else. None of these collateral benefits from the fruit traffic accrue to the New England railroads.

Thereupon there was offered and admitted in evidence Defendants' Exhibit No. 145, which is in the following form:

(Here follows Defendants' Exhibit No. 145, marked side folio page 558)

[fol. 559] Exhibit No. 145 shows high and low selling prices of grapes in the Boston market during the months of September, October, November and December, in the years 1922 to 1926, inclusive.

These figures were compiled from auction reports and represent actual sales made in Boston each day. These figures show that the price of juice grapes in the Boston market fluctuated from a low point of $1.61 to a high point of $10.54 per 100 pounds; and the price of table grapes from a low price of $2.11 to a high price of $14.23. This tends to show that the freight rate is a negligible factor in the price of this commodity on the Boston market. In

some cases these transactions would have been unprofitable to the fruit industry if the railroad had carried the grapes for nothing.

Cross examination:

The distribution of fruit among the other carriers which connect with us is to a large extent the result of railroad consolidation. I would say that the Erie Railroad carries a considerable part of the New York-California fruit and it is my off-hand opinion that the traffic is pretty equally divided between Rotterdam Junction and Mechanicsville.

Wherever the cars come in sufficiently large quantities to jusify it, we consolidate fruit trains into single trains. We also have other tonnage to fill out these trains if we haven't enough fruit to justify running the solid fruit trains. The fruit which we received at Rotterdam Junction, combined with the fruit received at Mechanicsville, [fol. 560] constitutes the bulk of our California fruit shipments, although a substantial part goes to us at White River.

The expense of heating fruit houses is not entirely attributable to deciduous fruit. We have to heat the houses for citrus fruit as well.

Thereupon J. W. BURNET was called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

I am Supervisor of Diversion Service under the General Manager of the Pacific Fruit Express Company, at Chicago. I have been in that position approximately six years.

A large percentage of the fruit and vegetable shipments from the Pacific Coast are rolled from points of origin to be sold in transit and are often billed to "Hold" points for diversion purposes. Many shipments are diverted, which has made necessary an accurate and efficient diversion service.

The Pacific Fruit Express handles diversion orders on perishable traffic for account of the shipments originating on the Southern Pacific lines and their short line connections in California, as well as perishable shipments originat-

ing on the Union Pacific, Western Pacific and Northwestern Pacific.

To effect this diversion service we maintain agencies throughout the country.

We furnish the shipper information as to the progress of the car towards its destination.

[fol. 561] The cars are collected at concentration points and the data is collected at those points.

We communicate between our offices by telegram and forward by telegram complete data as to each car in each block.

The shippers are furnished with records which eliminate the necessity for calling for or receiving the information from the companies themselves. This involves considerable loss by way of claims through negligence in causing delay or failure to accomplish orders.

We employ an average of thirty clerks per month in Chicago and 100 clerks per month at all points in the course of rendering these services.

Thereupon there was offered and admitted in evidence Defendants' Exhibit No. 147, which is in the followig form:

[fol. 562]

EXHIBIT NO. 147

Witness: Burnett

Docket No. 19130

Statement Showing Number of Carload Shipments (Exclusive of Those Loaded in SFRD Cars) of Dediduous Fruits (Except Apples) & Grapes, Also of Grapes Loaded in California During the Years 1925 and 1926 on Southern Pacific, Union Pacific and Western Pacific and Short Line Railroads which Routed via These Lines and Number of Times Diverted.

	Total shipments	Total cars diverted	Number of times diverted							Total diversions handled	Average times diverted
			Once	Twice	Three	Four	Five	Six	Seven		
					1925						
Deciduous fruit (except apples) & Grapes	15,142	7,183	4,981	1,641	427	122	11	1	0	10,093	0.66
Grape	42,967	30,262	21,786	6,482	1,547	367	64	14	2	41,277	0.96
Total	58,109	37,445	26,767	8,123	1,974	489	75	15	2	51,370	0.88
					1926						
Deciduous fruit (except apples) & Grapes	15,694	9,578	6,429	2,353	643	115	32	5	1	13,721	0.87
Grapes	40,359	30,676	19,225	8,048	2,575	549	183	53	43	46,776	1.16
Total	56,053	40,254	25,654	10,401	3,218	664	215	58	44	60,497	1.07

[fol. 563] Exhibit No. 147 points out the total number of shipments, and the second column the total number of cars diverted. In the first subdivision of that column it shows the number of shipments that were diverted from one to seven or more times.

Under the column "Total diversions handled" appears the number of actual diversions accomplished on this traffic, as compared with the total number of shipments. In 1926 specifically pointing out that 46,776 diversions were accomplished on shipments of grapes totaling 40,359 cars.

In 1926 the number of clerks employed in handling diversions was increased.

My testimony with reference to diversions applies to all contract lines served by the Pacific Fruit Express.

Cross examinations:

In 1925 and 1926 there were embargoes declared from time to time by some of the eastern houses, with the result that some of the California fruit shippers were under necessity of diverting their fruit. The declaration of these embargoes inevitably resulted in the diversion of considerable quantities of freight which was moving at the time the embargoes were declared.

Redirect examination:

The embargoes so referred to are those which cover the regulation of the flow of traffic and because of the congestion in eastern terminals, and because of the inability of the carriers in eastern terminals to set these cars for unload-
[fol. 564] ing. This is due to the fact that these cars are held for partial unloading from day to day and, necessarily, the terminals are filled.

Recross-examination:

I know that there is a so-called defensive system which has been put into effect from time to time and a permit system established by the carriers in connection with this fruit business during the peak period.

J. J. MAHONEY was thereupon recalled as a witness on behalf of the Defendants and testified further as follows:

During the year 1926, 1,054 trains departed from Bakersfield carrying deciduous fruits of which 1,035 ran through to Chicago. Of this number 64 failed to make the 154 hour schedule.

In 1917 the total number of fruit trains departing from Bakersfield and running through to Chicago was 438. 429 of these trains went to Chicago of which 24 made the 130 hour schedule. Of this number 131 trains that ran through to Chicago were more than 24 hours late.

Cross-examination:

Practically all of these trains operating from Bakersfield under the 130 and 154 hour schedules were deciduous fruit trains.

The traffic in 1917 was somewhat heavier due to the increase of traffic through the stimulus of the war. The record shown for the year 1917 would be fairly typical of our record for the years 1914 to 1916 inclusive.

R. B. HOFFMAN was thereupon called as a witness on [fol. 565] behalf of the Defendants and having been duly sworn, testified as follows:

I am Superintendant of Transportation of the Pacific Fruit Express at Chicago. I have been employed in that capacity since 1908 with the exception of two years from 1912 to 1914. During that time I was Traffic Manager for the E. L. Halser Company of Chicago. They were handlers of fruit and vegetables.

The Pacific Fruit Express is a refrigerating car line owned jointly by the Southern Pacific and Union Pacific lines. They serve the Southern Pacific, Union Pacific, Western Pacific Railroad and short line connections from these railroads with their refrigerating car equipment.

I give general supervision to the return of all our own cars while they are on the various lines in the United States, Mexico, and Canada and also arrange for the securing and movement of such foreign cars as we might

need. On March 1, 1927, we had in service a total of 38,278 freight refrigerator cars. During the years 1920 to 1926 we purchased 20,554 cars. In addition during the year 1925 we had 29,055 foreign refrigerator cars loaded and in the year 1926, 25,524 foreign cars loaded. The average cost of these refrigerator cars per car was the sum of $3183.00. The average cost of refrigerator cars in 1920 was $3996.67 and in 1926 $3075.75.

Thereupon there was offered and admitted in evidence Defendants' Exhibit No. 150, which is in the following form:

[fol. 566]

EXHIBIT No. 150

Witness: Hoffman

Docket No. 19130

"Statement Showing Number of Refrigerator Cars Stored
Year 1926

	Sou. Pacific System	Western Pacific	Union Pacific System	Total
Jan. 1	3,874	1,038	3,636	8,546
15	4,081	1,199	3,446	8,726
Feb. 1	3,856	1,160	2,850	7,866
15	3,642	1,143	2,660	7,445
Mar. 1	3,109	1,067	2,311	6,487
15	2,898	881	1,371	5,150
Apr. 1	2,439	755	1,335	4,529
15	3,906	721	1,280	5,907
May 1	6,266	139	1,445	7,850
15	6,192	20	1,100	7,312
June 1	4,911	124	892	5,927
15	2,466	124	588	3,178
July 1	2,917	10	999	3,926
15	4,120	0	1,543	5,663
Aug. 1	6,120	511	2,033	8,664
15	6,019	621	1,484	8,124
Sept. 1	5,878	884	3,253	10,015
15	2,671	0	1,167	3,838
Oct. 1	1,510	0	1,316	2,826
15	190	0	989	1,179
Nov. 1	152	0	1,230	1,382
15	1,217	0	1,901	3,118
Dec. 1	1,036	50	3,220	4,306
15	2,027	130	3,748	5,905

Includes only serviceable cars actually stored and not required for current use, and does not include cars held at principal terminals."

[fol. 567] Exhibit No. 150 shows the total number of cars stored on the Southern Pacific, Western Pacific and Union Pacific System during the year 1926, including the serviceable cars which were actually reported stored and fire

spaced, but does not include cars that were held in the large terminals or held back on connecting lines of our owners. By "fire spaced," I refer to cars taken off the main line to be stored and put on side tracks for storage. The cars are placed in groups of five cars, the groups being left one car-length apart, for fire protection.

In addition to the cars shown in Defendants' Exhibit 150, we have additional cars held in terminals for distribution on call. This statement merely represents the cars actually taken out of service because of lack of prospective business.

The movement of deciduous fruits from California tends to produce peak requirements. If it were not for the deciduous fruit traffic, excluding apples, we could get along with 12,000 less refrigerator cars.

Thereupon C. D. WARD was called as a witness on behalf of Defendants and, having been duly sworn, testified as follows:

I am Assistant to the Vice President of the Erie Railroad Company, whose jurisdiction extends over and beyond the New York terminals. I have been in that capacity for the last five or six years. I have been for a number of years, associated with the operating department of the Erie System.

In the handling of deciduous fruits over the Erie main [fol. 568] line from Chicago to their delivery in New York terminals we have recently increased our facilities by the building of Monmouth Yard, in Jersey City. Also owing to the purchase of heavy power we have been able to increase the train length by a small amount. There has been no change in the method of handling deciduous fruit traffic from Chicago to New York so far as the operation is concerned.

Nearly all shipments of California deciduous fruits handled by the Erie Railroad are received from connecting lines at Hammond, Indiana, 85 per cent via the Indiana Harbor Belt Railroad and 15 per cent via the Chicago Belt Railroad. Erie Railroad crews handle cars from the clearing yard of the Chicago Belt Railroad to Hammond, a dis-

tance of 17 miles. The Indiana Harbor Belt Railroad delivers cars in our Hammond yard in lots of approximately 60 cars. Deciduous fruit trains are not in solid lots. The deliveries consist of various kinds of fruit and it is, therefore, necessary to perform considerable switching in assembling the fruit for movement. Fruit trains of 60 cars are built up at Hammond with the switching and handling incidental to such building up and moved to Huntington, 122 miles distant over a 0.3 per cent grade.

At Huntington the engines are changed, inspection performed and bad order cars, if any, set out. The train goes from Huntington to Marion, Ohio, in lots of 60 cars, a distance of 126 miles over a 0.3 per cent grade. Marion is a break-up yard and icing station. Cars are iced and cars destined for points between Marion and Hornell are cut out on account of the grade of 1.25 per cent between Marion and Kent and the trains must be reduced to 54 cars.

[fol. 569] From Kent to Meadville, a distance of 54 miles, the grade is 1 per cent. Upon arrival at Meadville the trains are built up to 69 cars and moved to Salamanca, a distance of 106 miles, over a ruling grade of 0.6 per cent. From Salamanca to Hornell the ruling grade is 0.3 per cent and the distance 89 miles. Hornell is a general break up yard for the East and where the Buffalo line joins the main line. Cars are iced and classified. Considerable switching is necessary here. From Hornell to Susquehanna is a distance of 130 miles and the grade is 0.3 per cent. At Susquehanna the trains are built up to 75 cars for movement to Port Jarvis, a distance of 105 miles.

Leaving Susquehanna there is a grade of 1.38 per cent for 8½ miles requiring heavy helper service. East of this point the grade is approximately 0.3 per cent.

At Port Jervis the cars for New England territory are cut out. Trains are made up for movement to Croxton, a distance of 91 miles. For eight miles out of Port Jervis helper service is required.

On arrival at Croxton trains containing fruit are yarded in the eastbound receiving yard. Trains are inspected. They are then moved into the Croxton Fruit holding yard. During the heavy fruit season we hold an average of 500 cars a day, disposing of 300 a day. Cars must be inspected daily.

The agent at the Duane Street Station, New York City, receiver from Chicago, Buffalo and other junction points, notice of fruit shipments in transit. This information is recorded and consignees are notified. Upon arrival of the cars at Croxton car numbers are telephoned to the Duane [fol. 570] Duane Street Station and notice is sent to consignee by messenger. A written report is made out every morning at the yard office showing all cars on hand. The agent at Duane Street Station also gives consignee a list every morning showing cars on hand and on the line.

Upon order of consignee cars are grouped to be shipped and floated to Duane Street and unloaded on the dock. After the fruit is switched out of Croxton the cars are brought to Jersey City and moved to Duane Street on car floats having a capacity of 10 cars each. The unloading is done at night, making it necessary to have the piers well lighted and during the cold months it is necessary to heat the piers.

Upon receipt of orders from Duane Street cars are located and as the numbers are called off men designate on the record cards the float record number of each car. At the same time the Yard Master arranges a program to harmonize with the individual number of car floats ordered.

After the entire yard is checked up switching commences. For this purpose two engines are used, and sometimes four when the order is large.

The trains, consisting of an average of 30 cars, are moved to Jersey Cty, when made up, to the east bound receiving yard.

Cars are picked up in ten car units and shoved to the float bridge, loaded on floats and towed across the river to Duane Street Station. Car floats with a capacity of 10 cars have two tracks with a trucking platform between. [fol. 571] In loading floats three cars are placed on one track and five cars put on the other track. To complete the loading two aditional cars are placed with the three cars first loaded. It is not practicable to put five cars on one track when there are no cars on the other.

Three engines are used at Jersey City in loading floats. Duane Street Station consists of two piers 80 x 895 feet and a bulkhead extending across both piers and the intervening slip. There is a second story over the bulkhead used as auction rooms and for office purposes. There are

four auction companies located on our Duane Street pier. Approximately 95 per cent of the fruit received at Duane Street Station is sold at auction.

Cars for Newark, as a rule, are originally billed to New York and are diverted. They are switched out at Croxton at the same time the regular fruit order is filled and moved to Newark during the early evening.

The handling of cars to be unloaded at Jersey City is the same as recorded cars for Duane Street Station up to and including arrival at Jersey City yards. There they are switched to various cold storage plants.

The icing of cars at Jersey City is expensive because of the necessity of switching across the running tracks to the icing platform through congestion. Cars remain on the float at Duane Street Station and when empty are towed back to Jersey City, removed from the float and assembled for movement to Croxton yards.

About 15 per cent of our refrigerator cars move westbound loaded.

[fol. 572] The terminal switching operation out of Croxton yard takes four and one half hours. The haul from Croxton to Jersey City takes 2.7 hours.

The operation in loading the car float at Jersey City takes 1 hour 36 minutes.

At the Duane Street Station we employ from 500 to 700 men at night divided into working gangs of 9 men each. In addition to unloading deciduous fruits at Duane Street Station we sold the fruit in accordance with the receiver's directions for display.

If a package is broken coming out of the car we endeavor to repair it, maintaining a large force of coopers for that purpose. If it cannot be put into shape so that it is acceptable to the receiver it is set off to one side and the railroad pays for the fruit.

These packages are frequently broken.

We have 28 car floats in service at the present time and must hire additional floats in which event we pay $40.00 a day for them.

On 300 cars of grapes and vegetables 200 cars go to Duane Street Station and the others go to Jersey City and Newark.

In 1924 we handled 41,560 cars of fruit and vegetables; in 1925, 44,895 cars and in 1926, 51,470 cars at our terminals. That includes Newark and all throughout the country.

Since 1923 the Erie Railroad has increased wages by arbitrary award to conductors, trainmen and yardmen 7½ per cent. Fireman and hostlers got an increase of 7½ [fol. 573] per cent. The shopmen were increased 2½¢ per hour. The increase in wages paid by the Erie Railroad in 1923, amounted to two million and a half each year.

The embargoes laid by the eastern lines on deciduous fruits are a result of the unloading in our terminals being so large as to block it up and require the diversion of traffic.

Cross-examination:

I think there was an embargo in 1926 on juice grapes. We do not wish to put on embargoes, but when all switching is full we impose one.

If the traffic were split up among other railroads between Chicago and New York, it would lighten our burden. Our Duane Street facilities have been quite inadequate to handle this increasing deciduous traffic for several years. We have had to rent outside space, that is, in the peak of the movement, in September and October. It is necessary to arrange for the delivery of considerable quantities of deciduous fruit on the Jersey side to manage the burden. I have heard that there is an effort being made on the part of one of our competitors to get a considerable part of this deciduous fruit traffic for New York delivery. We don't want to lose any traffic.

Juice grapes are principally delivered to our Monmouth Street yard, in Jersey City. Juice grapes intended for consumption on Manhattan Island are for the most part delivered to Jersey City in our Monmouth Yards. We are relieved of the necessity of floating these grapes across the river to Manhattan Island. We collect a charge for the service rendered by our company in sorting fruit at the Duane Street Pier.

Our schedule now is practically 12 hours longer than it [fol. 574] was in 1917. This slower schedule saves in operating expense.

Most of the meat and packing house products come to us at our 51st Street yard in Chicago. We make the trains up there, and they reach Croxton on the third morning thereafter. Our meat train schedule is faster than our fruit train schedule and out meat trains carry less tonnage than the deciduous fruit trains.

In transportation of regular freight we must lighten the tonnage in districts where the grades are sharp. We handle all freight and regular traffic over this route in substantially the same fashion.

Redirect examination:

As a general thing, taking 100 per cent as our dead freight tonnage, the tonnage of our deciduous fruit traffic is one-third less.

Recross-examination:

Grapes moving over our line from Western New York to New York City, are in small lots. The movement is very irregular. We don't think much of it. But there is a constant, steady flow of the California perishable traffic over our line every day.

Thereupon H. E. JACKSON was called as a witness on behalf of Defendants and, having been duly sworn, testified as follows:

I am connected with the Central California Traction Company, Assistant Superintendent and General Agent. I have been connected with this line 17 years. It is a line running between Stockton and Sacramento, California. It [fol. 575] is an electric line. It has a branch line at Lodi of 2 miles. We connect with Stockton and with the Southern Pacific, Western Pacific and Santa Fe, and at Sacramento with the Southern Pacific and Western Pacific. We are located in the Lodi district.

In 1926 our total transcontinental shipment of grapes was 2,852 carloads, 30 cars of pears, 90 cars plums and 2 miscellaneous, mixed cars. This was all shipped in re- [fol. 576] frigerator cars. The grape shipping season com-

menced August 15, 1926, and stopped November 15. That is the usual time except pears which come a little earlier.

We increase our operations as to train and train crews by reason of the increase of the movement of deciduous fruits. On August 15, 1926, we put on four additional crews to handle the grapes. In June, 1926, we put on one crew to handle dried fruit. The regular crews during the course of the deciduous fruit shipping season do not handle any of the deciduous fruits. We usually add four crews to handle deciduous fruits annually. Each crew consists of a motorman, conductor and three brakemen. We keep these crews on until the end of the grape season in the middle of November. In addition to transcontinental shipments these crews handle local freight. In 1915 the local freight amounted to about 150 cars, which is about one per cent of the total. We have 5 electric motors, three of which are tied up for 9 months in the year and used only during the grape movement. There are 29 spur tracks used exclusively for grape business. During the deciduous fruit movement there is no change in our dead freight business, which is practically the same the year around.

Cross-examination:

The movement of deciduous fruit in 1925 was about 800 cars greater than in 1926. The falling off in tonnage in 1926 was on grapes. There was a good deal of tonnage of grapes unharvested this year due largely, to my understanding, to market conditions.

[fol. 577] Our net earnings are best during the grape season. Our line would be a good deal better off if we could actually obtain all the fruits grown in that territory and start rolling them eastward. In other words, we would rather have 4,000 cars of this fruit than 2,900.

Business conditions in Lodi are rather poor now. There is a distinctly depressing condition.

We have no expensive freight facilities or terminal such as are maintained by the big trunk lines in big cities. Our local freight without our transcontinental traffic, would not keep us going very well.

Thereupon J. B. BLAIR was called as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I am Assistant to the General Superintendeent of Transportation with the Baltimore & Ohio Railroad, with which I have been for 30 years. During the peak season we get through the Chicago gateways about 200 to 250 cars a day of deciduous fruit. We run solid fruit trains. California fruits for movement via the Baltimore & Ohio Railroad are received in Chicago from April to November in each year. This fruit is handled from Chicago to Baltimore, Philadelphia and Washington for third morning deliveries. We maintain a schedule of 55 hours on perishable traffic from Chicago to Philadelphia. For this schedule we sacrifice in cars and tons. The perishable traffic is handled on an average of 40 cars as compared with 52 cars of merchandise in quick dispatch and 60 cars on other traffic. The limit per train for fruit trains is 40 cars. This refers to all perishable traffic, including California deciduous fruit. The perishable freight train is given preference in movement over [fol. 578] all other freight trains except livestock specials, and is given rights equal to those of livestock specials, the schedules being approximately the same. There are two icing stations between Chicago and Philadelphia, where [fol. 579] cars are switched, re-iced and classified.

In principal cities, such as Pittsburgh, Baltimore and Philadelphia, expensive facilities have been provided for exclusive use in handling perishable fruit and produce. In Philadelphia a perishable produce terminal, a joint facility of the Baltimore & Ohio Railroad and Reading Railroad was opened November 1, 1926. This facility covers an area of approximately 23 acres.

Upon arrival at terminals consignees are notified promptly and special attention is given the handling of the traffic. Cars are daily inspected and re-iced when necessary and records maintained.

At Philadelphia the railroad is required by trade conditions to recooper packages damaged, and practically each car requires this service, the expense of which is assumed by the carrier.

If the freight when unloaded is in such condition that the consignee does not accept it the railroad resells it and pays the market price.

Frequent reconsignment orders are received which entail considerable clerical work, telegraphing and switching in transit. The percentage of empty to total mileage of refrigerator cars for the year 1926 was 51.3 per cent.

Cross-examination:

Three years ago we handled some grapes for the Erie Railroad approximating 3 trains a week to New York because the traffic had grown to such proportions that the Erie Railroad was unable to handle it all. Our proportion [fol. 580] of the traffic has grown notably in the last three or four years. The California deciduous fruits constitute a very large proportion of our movements of perishable fruit and vegetables easterly from Chicago.

There is a charge made for each diversion east of Chicago of $2.70, if the car is rolling, and $6.30, if the car has been placed.

The bulk of this fruit which we receive at Chicago for eastbound movement, passes over our main lines of railroad and goes largely to the more important centers.

Thereupon C. D. Grace was called as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I am employed by the Pennsylvania Railroad, at Philadelphia, and supervise the arrangement of fruit train service. My duties cover the territory of the Pennsylvania lines east of Pittsburg. My territory is confined to the lines in this territory.

Since 1923 there has been no change in handling of freight in that territory.

The movement of fruit and vegetables handled by the Pennsylvania Railroad is east and northbound. Fruits and vegetables from California are received at Chicago and assembled for solid train movements. They are classed with reference to territory. If there are not sufficient cars of perishable fruit the train is filled out with other tonnage. These cars move on an expedited service, 54 hours from Chicago to New York, as compared with the service of 80 hours for non-perishable freight. At New York the fruit

[fol. 581] intended for auction is brought to the auction place.

Perishable fruit is given preference over all other freight and run ahead of any other freight awaiting delivery.

There is another service for perishables from Chicago to the Atlantic Seaboard. Perishable trains are operated at a speed of 16.5 miles per hour as compared with 11.9 miles per hour for non-perishable freight.

During the last season Pennsylvania Railroad handled slightly in excess of 5,000 cars of California juice grapes at its Manhattan Produce Yard in the Jersey City district. This yard has a capacity of 500 cars.

The perishable trains operating at the present time are the same as the trains operated prior to the war and there has been no change in the schedule.

Pennsylvania Railroad handles grapes originating in New York and West Pennsylvania for Philadelphia and Baltimore. These grapes are handled in the regular service organized to take care of the freight movement on this road.

Cross-examination:

New York grapes which are received by the Pennsylvania Railroad at Brockton do not go in train load lots but in regular service. The California movement of grapes is more persistent and greater in volume. Practically all of the California deciduous fruits move over the main line, at least as far as Harrisburg, and then it diverges to New York, Philadelphia and Baltimore. There is a main line movement as far as Philadelphia.

We have quite a little movement of livestock from Chicago eastward. The schedule on those trains is practically the same as the schedule on our perishable freight trains, [fol. 582] third morning arrival at Jersey City from Chicago. Our perishable trains contain all classes of perishable freight, including fruit, vegetables and fresh meats.

[fol. 583] Charles H. Heinisch was thereupon called as a witness on behalf of Defendants and, having been duly sworn, testified as follows:

I am employed by the New York Central Railroad System at Cleveland, Ohio as Assistant to the Superintendent of Freight Transportation. My jurisdiction extends from Chicago to Buffalo. I am not familiar with the terminal conditions east of Buffalo.

Our perishable trains have a schedule from Chicago to New York of 51 hours running time. We reduce the number of cars in perishable trains as compared with our tonnage freights which results in a reduction in the tonnage.

The average gross tonnage for the first 10 days in July in 1926 on perishable commodities trains was 2,758 tons as compared with 3,801 tons for a train of merchandise and other freight that is not perishable. This situation would relatively exist if we followed each division of the road on to Buffalo.

As a result of the faster operation of perishable trains it is necessary to employ train crews under a wage agreement pursuant to which they are paid for a whole 8 hours when they do not actually remain on duty 8 hours. For the month of July, 1926, between Elkhart and Chicago 616 hours of work were paid for at a total cost of $449.33 as a result during which time no work was performed. This is the result of our fast schedule not requiring them to remain on duty for full time.

When cars arrive at terminals they must be iced and switched. During September we have, I believe, 50 per [fol. 584] cent more reconsigning on perishable freight than on all other classes of freight combined. Reconsigning must be handled by telephone or telegraph.

Practically all of this deciduous fruit movement from California is over our main lines as far as DeWitt, and from there to New York, I believe, it is also over our main line.

Thereupon C. D. Grace was recalled as a witness on behalf of the Defendants and testified further as follows:

The Pennsylvania Railroad handles a susbtantial portion of Florida orange traffic destined to New York. The Potomac Yard, Virginia, is a joint yard operated by seven different lines. The oranges and other citrus friuts from

Florida arrive at these yards where the trains are broken up and reclassified for various destinations or put in the "hold" yard and held for reconsignment. After classification tains are made up and dispatched in solid trains to New York, New England, Philadelphia and western destinations. We endeavor to fill out these trains with fast freight tonnage, or other freight if there are not sufficient oranges. As a rule there is approximately a trainload of perishable freight for New York daily except as the season progresses and the movement gets heavy, when we have two or three trainloads. Trains are limited to 40 cars. Our running time from Potomac Yard to Jersey City, 228 miles, is 15 hours and 50 minutes. Delivery is made for the market next morning.

The same notices are given to consignee as in the case of deciduous fruits in cars to New York, which are reconsigned after leaving Potomac Yard.

The Pennsylvania Railroad handles 75 per cent of the [fol. 585] Georgia peach crop and practically all of the Carolina peach crop. In New York last year the movement of peaches through Potomac Yard was 9,000 loads. The running time for peaches is exactly the same for oranges and we handle it in the same service.

Recross-examination:

Practically all of the cars that carry fruit from Florida return empty unless they are used in local vegetable trade or sent west. The southbound movement is practically all empties.

Thereupon PHIL. M. BAIER was called as a witness on behalf of the Defendants, and having been duly sworn, testified as follows:

I am a fruit and vineyard grower and have been since 1895, continuously. I own 3,000 acres of tree fruits and vineyards. About 20 per cent is tree fruits and the balance vineyards. These properties are located in Tulare County, California.

I do not believe that the reduction of freight rates will benefit the deciduous fruit industry in the State of California. In 1917 and 1918 and 1919 we had prosperous

years, especially in grapes, and high prices which induced growers to extend their holdings, planting many thousands of acres and causing an overproduction from which we are now suffering.

In 1925 and 1926 we shipped about 12,000 cars of Malaga grapes at a price of $15.00 a ton. We also had from 7,000 to 10,000 tons of grapes left in the state that we did not [fol. 586] deem it feasible to ship because there was no market for them. If they had been transferred to New York for the rate of $1.44 per hundred pounds, the grower would not have been able to make a profitable return on that season's crop.

From the start to the finish of the season the price on grapes on eastern transcontinental markets fluctuated more than $1.73 per 100 pounds. This is due to supply and demand. When we have a shortage the markets are up and we receive high prices. When there is an overabundance on the market we sustain losses.

Assuming that the Volstead Act and the Eighteenth Amendment continue to be a part of the law of this country, I consider that the market for the California grape industry has been developed to its fullest extent.

75 per cent of all the grapes we ship are made into juice.

Cross-examination:

The Malaga Grape growers have not made any money for the last four years since this large production, and they have been in pretty severe economic difficulties for the past four years. The Tokay grape growers are in the same condition as the Malaga grape growers.

During the last year tree fruit prices in the East have been very low because of the competition of the eastern grown fruits due to the fact that the eastern grown fruit was produced in very heavy quantities last year. The tree fruit prices have gone down quite alarmingly and the citrus fruit prices, on the other hand, have been good and have gone up. The real depression in the California fruit in- [fol. 587] dustry is in deciduous fruit and not in citrus fruit. All tree fruits compete one with the other and there is no direct competition from the East with California grown plums.

From a selfish standpoint I would like to see the freight rate increased. There is unquestionably more fruit produced in California than there is market for.

[fol. 588] It is going to be a case of the survival of the fittest. The men who have vineyards less advantageously situated than others should get out of the business and the sooner they do the better because every year since 1923 we have been shipping all the grapes that the market would take and about 20,000 cars were shipped that brought the growers nothing and we had from 10,000 to 20,000 cars of grapes left in our vineyards in California. I think that an increase in the freight rate would tend to cut down the production and would thereby reduce the shipments.

I think if the railroads handled all the fruit for absolutely nothing it would be the worst thing in the world because we would get nothing for our grapes.

T. P. Ward was thereupon called as a witness on behalf of the Defendants and, having been duly sworn, testified as follows:

I am General Accountant with the Erie Railroad Lines. I have been connected with the Accounting Department of the Erie Railroad for eight years. I have taken an active part in the preparation of cost studies intended to show the cost of handling various fruits and also vegetables coming from transcontinental terminals to the Erie lines at Chicago. I have prepared a cost study which shows as accurately as can be shown in my judgment the cost of handling cars of deciduous fruits coming to the Erie Railrad at Chicago and delivered at Duane Street, New York. The statement now shown to me was made on that basis. This cost study prepared by me shows the cost of handling cars [fol. 589] of deciduous fruit over the Erie Railroad Lines from Chicago to Duane Street, New York.

Thereupon the said cost study was offered and received in evidence as Defendants' Exhibit No. 157.

[fol. 590] EXHIBIT 157

Witness: T. P. Ward

Erie Railroad Company

Manner of compiling statement submitted herewith indicating cost per car of handling fruit moving over the Erie Railroad through the Chicago Gateway for New York is as follows:

1st. Average number of cars per train.

These figures indicate average cars handled in trains during period January to December 1926, as per records of Transportation Manager.

2nd. Freight proportion of charges to various expense items in connection with the direct operation of a freight train were taken for the period January to December 1926, over divisions between Hammond and Croxton. No items of expense connected with other divisions of the railroad were included. Freight train miles covering the same divisions and period were taken and divided into various items of expense to ascertain the average cost per freight train mile. This average cost multiplied by the number of miles between Hammond and Croxton gives the total road cost for operating a train between points mentioned. In turn, this cost is divided by the average number of cars handled per train, to ascertain the average cost per car. In determining the amount to be included for freight train car repairs only light repairs were used, as the repairs to these cars represent usually only minor defects for which we are responsible.

3d. Cost of handling cars through division yards, Hammond inclusive to Croxton exclusive, was ascertained by taking the charges to various items of yard expense for the period January to December 1926 and dividing by the number of cars handled in the various yards to secure the average cost per car through divisional yards. This charge, added to the cost for road haul, Hammond inclusive to Croxton exclusive, plus private car line mileage allowances, gives the average cost per car between points mentioned.

4th. The average cost per car for return of the empties from Croxton exclusive to Hammond inclusive was ascertained in the same manner.

[fol. 591] Erie Railroad Company

Statement Showing Approximate Expense per Car on Fruit from California and Pacific Coast Points to Duane Street, New York, via Hammond and Chicago

Year 1926

Costs	Average per car
Direct road and yard haul costs	$88.99
Direct terminal costs	37.93
Loss and damage claims	See note
Total direct costs	$126.92
Other expenses (see note)	25.30
Total cost per car (excluding loss & damage)	$152.22

Note.—The "Other Expenses" include nothing for loss and damage, injuries to persons or damage to property, depreciation or interest on investment in any property used in handling this traffic or for taxes, or for other expenses not directly connected with the handling of the fruit traffic.

[fol. 592] Erie Railroad Company

Statement Showing Approximate Cost per Car, 4th Morning Delivery, Jersey City, N. J., Including Road Haul and Yard Expenses Hammond Inclusive to Croxton Exclusive Eastbound and Return of Empties Westbound from Croxton Exclusive to Hammond Inclusive, Average 65 Cars per Train Eastbound and 82 Cars per Train Westbound

Period January, 1926, to December, 1926

I. C. C. No.	Road-haul expenses	Average cost per car: Eastbound loads	Westbound empties	Total
308	Steam Locomotive Repairs	$6.17	$4.89	$11.03
314	Freight Train Car Repairs	1.41	1.12	2.53
392	Train Enginemen	3.05	2.42	5.47
394	Locomotive Fuel	6.04	4.79	10.83
397	Water for Locomotives	.32	.25	.57
398	Lubricants for Train Locomotives	.13	.11	.24
399	Other Supplies for " "	.09	.07	.16
400	Enginehouse Expense	1.26	1.00	2.26
401	Trainmen	3.66	2.90	6.56
402-B	Lubricating Cars	.27	.21	.48
402-C	Other Train Supplies & Expenses	.72	.57	1.29
		$23.12	$18.33	$41.45
	Yard expenses			
308	Yard Locomotive Repairs	$.71	$.71	$1.42
378-379	Yard Conductors and Brakemen, Switch and Signal Tenders	1.42	1.42	2.84
380	Yard Enginemen	.71	.71	1.42
382	Fuel for Yard Locomotives	.62	.62	1.24
385-387	Yard Locomotive Supplies	.06	.06	.12
388	Enginehouse Expense	.30	.30	.60
389	Yard Supplies and Expenses	.02	.02	.04
377	Yard Masters and Clerks	.61	.61	1.22
		$4.45	$4.45	$8.90
	Total road and yard expenses			$50.35
	Private car line mileage allowances			38.64
				$88.99

[fol. 593] Erie Railroad Company

Other Expenses, January, 1926, to December, 1926, Both Inclusive, Hammond to Croxton

	Total freight expenses	Per freight train mile	Per 964.15 train miles, Hammond to Croxton	Per loaded car (divided by 65)	Per empty car (divided by 82)	Total
Maintenance of Way & Structures Less cost of Maintenance charges to Roadway Buildings and Stations and Office Buildings	$6,350,504.24	$.5709	$550.43	$8.47	$6.71	$15.18
Traffic Expenses:						
Superintendence	464,386.60	.0417	40.20	.62	.49	1.11
Stationery and Printing	99,357.51	.0089	8.58	.13	.10	.23
Transportation Expenses:						
Superintendence	750,497.55	.0674	64.98	1.00	.79	1.79
Dispatching Trains	391,511.52	.0352	33.94	.52	.41	.93
Crossing Protection	273,299.84	.0245	23.62	.36	.29	.65
Drawbridge Operation	14,613.29	.0013	1.25	.02	.01	.03
Telegraph & Telephone Operation	101,600.48	.0091	8.77	.13	.11	.24
Stationery & Printing	95,126.31	.0085	8.19	.13	.10	.23
Signal & Interlockers Operation	327,023.30	.0294	28.35	.44	.34	.78
General Expenses:						
Salaries & Expenses of Clerks and Attendants	1,506,025.81	.1354	130.55	2.01	1.59	3.60
General Office Supplies and Expenses	222,747.00	.0200	19.28	.30	.23	.53
Total				$14.13	$11.17	$25.30

[fol. 594] Erie Railroad Company

Statement Showing Terminal Expenses in Moving Fruit from Croxton to Jersey City, N. J., and Duane Street, N. Y., Period January 1, 1926, to December 31, 1926

Yard Service:		
Switch engine service in Croxton and Jersey City Yards	$3.29	
Overhead in Freight Yards—covering Yard Masters and Assistants	.40	
		$3.69
Station Expenses:		
Direct Labor	$16.21	
Coopering broken packages	2.51	
Other Station Expenses (Duane Street)	2.47	
		$21.19
Floating Expenses:		
Car Float Service	$3.00	
Tugboat Service	4.47	
		$7.47
Miscellaneous:		
Rent for Duane Street Piers	$3.22	
Removal of Refuse from Piers	.04	
Proportion of Joint Fruit Inspector's Salary	.02	
Hand Trucks, Gang Planks, etc.	.03	
Lighting Piers	.13	
Police Protection	.39	
Lighting Car Floats	.02	
Insurance on Piers 20 and 21	.18	
Maintenance of Yard Freight Tracks	.33	
Maintenance of Piers 20 and 21	1.22	
		$5.58
Total cost per car		$37.93

[fol. 595] Erie Railroad Company

Yard expenses:	Terminal switching service
Eastbound hump engine classifying train of 50 cars (6) brakemen of this crew acting as car riders	1 hr.
Yard engines at Croxton switching ordered cars pulling back over hump and assembling for haul engine. Necessary to handle 150 cars to get out 50	3½ hrs.
Switching service Jersey City Yard loading floats, and handling empty refrigerator cars off remaining floats, 1 hour 36 mins. per float of 10 cars, equalized to 5 floats of 50 cars	8 "
Westbound hump engine at Croxton handling empty refrigerator cars for westbound road movement, train of 50 cars	1½ "
	14 "

14 hours reduced to miles on the basis of 6 miles per hour is a total of 84 miles consumed in handling a train of 50 cars. The average cost of switching service for period January 1st to December 31st, 1926, is $1.4796 per mile, or $124.29 for 50 cars, producing cost of ..... $2.49 per car

Haul engine, Croxton to Jersey City:

Haul Engine pulling train of 30 cars from Croxton to Jersey City, and returning to Croxton with empty refrigerator cars 2.7 hours. 2.7 hours reduced to miles on basis of 6 miles per hour is a total of 16.2 miles. The average cost per mile switching service—period January 1st to December 31st, 1926, is $1.4796 or $23.97 for 30 cars, producing cost of ..... $.80 per car

$3.29 "

[fol. 596] Erie Railroad Company

Yard expenses:

Overhead in freight yard covering pay of Yard Masters and their assistants.

This expense represents wages of Yard Masters and their assistants at Croxton and Jersey City Yards apportioned on number of cars handled as below:

Croxton: Amount of wages—Jan. to Dec. 1926, $85,956.71. Number of cars handled 757,-037. Average cost per car $11		.22 per car
Eastbound	$.11	
Westbound	.11	
Jersey City: Amount of wages—Jan. to Dec. 1926, $35,311.78. Number of cars handled 399,173. Average cost per car $.09		$.18 per car
Eastbound	$.09	
Westbound	.09	
Total cost per car		$.40 per car

[fol. 597] Erie Railroad Company

Station Expense:

Direct Labor: During period January 1, 1926 to December 31, 1926, 30,256 cars of deciduous fruits and vegetables were handled at Duane Street, New York. Total costs for handling such shipments aggregated $567,434.94. We collected back from consignee for assorting $76,794.59. Net cost of handling 30,256 cars of fruits and vegetables—$490,640.36, or		$16.21 per car

Erie Railroad Company

Station expense:

Coopering Broken Packages: Labor performed by N. Y. Marine Co. under contract at rate of $2.25 for each car received. Erie furnished lumber and nails used in coopering during period, January 1 to December 31, 1926. Material aggregating amount of $10,022.60 was used 38,732 cars of fruit received same period. Cost per car $.26 .... $2.51 per car

[fol. 598] Erie Railroad Company

Station expenses:

Other station employes, Includes wages of 18 employes engaged in fruit service exclusively and additional payments to contractors account idle time awaiting floats, furnishing Watchmen and Inspectors, etc. Cost for year 1926, $51,713.84. This amount apportioned to total number of fruit cars handled at Duane Street—38,732—produces cost per car of $1.33.

Also includes wages of clerical employes engaged in fruit and merchandise jointly. Cost for year 1926, $35,987.21. Apportioning this amount on bill basis for same period (322,596) shows cost per bill of $.11. 2 bills per car $.22.

Also includes wages of Electricians, Gatemen, Floatmen, Seal-Takers, Truck Repairmen, etc., whose wages during year 1926 aggregated $23,889.67; apportioned on basis of all cars handled (42,668) produces cost per car of $.56.

Also includes proportion of Station Accounting Bureau apportioned on bill basis. Cost for year 1926 $55,386.00, apportioned to bills during same period (322,596) produces cost per bill of $.17. Fruit cars require 2 bills per car or $.34 per car. Postage $.02. Total $.36 per car.

$1.33
.22
.56
.34
.02

$2.47 Cost per Car.

[fol. 599] Erie Railroad Company

Floating Expenses:

Carfloat Service: During years 1921, 1922, 1923, 1924, 1925 and 1926, supplies furnished floats aggregated $60,-994.16. During years 1921 to 1926, inclusive, maintenance of carfloats aggregated $1,163,227.43. Both of these items are applicable to 30 carfloats and when prorated, average $.93 per day per float for supplies and $17.70 per day per float for maintenance.

Insurance premium on carfloats for year 1926, $35,750.00, or $3.26 per day per float.

Cargo insurance premium on carfloats for year 1926 aggregates $9,045.00 or $.83 per day per float.

Interest on Investment on carfloats: Total valuation $864,738.76 at rate of 6% equals $51,884.33 per year, or $5.07 per day per float.

Supplies	$.93
Repairs	17.70
Insurance on equipment	3.26
Cargo insurance	.83
Interest on investment	5.07
	$27.79

Apportioned to 9.24 cars per Float.

Float makes one round trip per day—Cost per car, $3.00.

[fol. 600] Erie Railroad Company

Floating Expenses:

Tugboat Service: According to Contract with Phœnix Transit Company, $34.00 was paid for round-trip of each Carfloat from Jersey City, N. J. to Duane Street, New York.

During period, January 1926 to December 1926, payments were made for towing Carfloats containing fruits cars, aggregating $142,680.88. Total number of cars of fruit floated —38,812—producing cost of $3.68 per car. Also covers payments to Phœnix Transit Company for shifting floats at Floatbridge, Jersey City, N. J., which aggregated $74,460.00 for period, January 1 to December 31, 1926. Of this amount $30,259.36 was applicable to Duane Street business.

Fruit cars represent 90.77% of total business at Duane Street for same period and this percentage of $30,259.36 produces $27,466.42.

Total number of cars of fruit floated—38,812, or $.71 per car.

Insurance on Equipment-Premium on 13 Tugs aggregated $18,705.00—13 Tugboats—365 days or 4,745 Tug Days.

Insurance Premium	$17,875.00	
4,745 Tug Days	3.77	per Day.
Average of 5 hours per round-trip, or	.79	" Trip.
Apportioned to 9.24 cars	.08	" Car.

Grand Total Cost for Tug Service, $4.47.

[fol. 601] Erie Railroad Company

Miscellaneous Expenses:

Rent for Piers: Space used by Duane Street properties, 895 feet long by 485 feet wide, or 434,075 square feet. Space used by Ferry-house properties, 895 feet long by 160 feet wide, or 143,200 square feet, including slips. Total space, 577,275 square feet.

Total square feet Freight house properties, 75% of $5,772.75.

Total square feet Ferry house properties, 25% of $5,772.75.

Total rental paid for entire properties, January 1, 1926, to May 31, 1926 (5 months at $13,130.10, based on yearly rental of $157,561.33)		$65,650.50
25% of $65,650.50 for Ferry House	$16,412.63	
75% of $65,650.50 for Freight House	49,237.87	
		$65,650.50
Amount for freight purposes for above period		$49,237.87
Rental of Piers 20 and 21, period June 1, 1926, to December 31, 1926, 7 months at $14,331.75 (based on yearly rental of $171,981.00		$100,322.25
Total rental for freight house properties		$149,560.12

Less amount collected for use of Pier properties:		
Connolly Auction Company	$5,000.00	
Independent Fruit Auction Company	1,650.00	
Amount collected for privilege to sell sandwiches	125.00	
Amount collected for privilege to sell Christmas trees	150.00	
Amount collected from Keystone Freight Corp.	760.00	
Amount collected from Judson Forwarding Co.	80.00	
Amount collected from New York and Porto Rico S. S. Co	8,266.21	
Amount collected from Dollar S. S. Co.	900.00	
		$16,931.21
		$132,628.91
Amount chargeable to Fruit traffic 90.77 (based on cars handled)		120,387.26
Amount paid Old Dominion S. S. Co. for use of Pieer 25 to handle overflow fruit		3,967.45
Amount paid to Pennsylvania Railroad Co. for use of Pier 29 to handle overflow fruit		486.39
		$124,841.10
Total number of fruit cars handled		38,732
Average cost per car		$3.22

[fol. 602] Erie Railroad Company

Miscellaneous Expenses:

Removal of refuse from Piers: This cost is based on the total payments covering cleaning, assembling and removing rubbish from fruit piers. During year 1926, payments were made aggregating $1,710.00. This amount apportioned to total number of Fruit cars handled during same period produces cost per car of $.04.

Erie Railroad Company

Miscellaneous Expenses:

Joint Inspector: Proportion of wages paid Joint Fruit Inspectors employed at Duane Street, New York. Total wages paid such employes for year 1926 aggregated $8,275.92, of which the Erie Railroad assumes 11.84% or $979.87. Total cars of fruit handled during same period, 48,732, producing cost per car of $.02.

Erie Railroad Company

Miscellaneous Expenses:

Use of Hand Trucks and Gang Planks: Hand trucks, gang planks, used at Duane Street, New York, to handle Fruit, $100.00 per month, or $1,200.00 for year 1926. This amount apportioned to 38,732 cars of fruit, produces cost per car of $.03.

[fol. 603] Erie Railroad Company

Miscellaneous Expenses:

Lighting Piers: Tests made of power consumed on fruit piers indicate 38.9 K. W. hours were consumed in one hour, which would show a cost of $1.95 per hour. Average cost per K. W. hour paid New York City, $.05. Average cost for 10 hours for 255 nights, $4,972.50, proportioned to number of fruit cars handled during year 1926 (38,732), or an average cost per car of $.13.

Erie Railroad Company

Miscellaneous Expenses:

Police Protection: Cover payments to Watchmen at Duane Street, New York, which aggregated $16,641.37 during year 1926.

Total payments	$16,641.37
Total cars handled same period	42,668
Average cost per car	$.39

Erie Railroad Company

Miscellaneous Expenses:

Lighting Carfloats: Power used lighting carfloats as determined by tests shows a cost of $.047 per hour, on an average of 4 hours per float. The cost of lighting is 19¢ proportioned to 9.24 cars, which shows a cost per car of $.02.

[fol. 604] Erie Railroad Company

Miscellaneous Expenses:

Insurance on Piers 20 and 21: The total premium for insurance on these properties is $7,817.50 per year. During year 1926, 42,668 cars were handled, producing cost per car of $.18.

Erie Railroad Company

Miscellaneous Expenses:

Maintenance of Yard Freight Tracks: During years 1925 and 1926, maintenance of yard freight tracks at Croxton and Jersey City aggregated $369,943.92, and when apportioned to total number of cars handled same period, produced cost per car of $.33.

Erie Railroad Company

Miscellaneous Expenses:

Maintenance of Piers 20 and 21: During years 1924, 1925 and 1926, maintenance of piers aggregated $141,453.23, and when apportioned to total number of cars handled same period, produced cost of $1.22 per car.

[fol. 605] Cross-examination:

The computations appearing in Exhibit No. 157 are made upon exactly the same basis as those introduced in evidence in the prior case, Docket No. 15,137. In determining our transportation costs, I have taken all of the transportation costs of the several divisions of the Erie, extending from Hammond to Croxton, over which this traffic moves. These

divisions include branch lines. The following branch lines are included in my data: Niles and Lisbon branch, from Niles, Ohio, to Lisbon, Ohio; Newcastle Branch, Sharon to Newcastle, Pennsylvania; Youngstown to Leadville; Oil City branch, Meadville to Oil City, Pennsylvania; Salamanca, New York, to Brockwayville, Pennsylvania; Corning, New York, to Batavia, New York; Middletown, to Pinebush; Goshen to Pine Island, New York; Greycourt to Newburgh, New York, Harriman to Newburgh, New York; Suffern to Sparkhill.

This computation represents the aggregate expenses of conducting freight transportation upon our several divisions, extending from Hammond to Croxton and including the branch lines which I have just specified. It does not represent a specific effort to determine the cost of our fruit freight service from Hammond to Croxton, considered by itself, and exclusive of branch line transportation. Neither is it confined to the expressed determination of the cost of transporting perishable traffic. It represents the total or over-all cost of all freight transportation between Hammond and Croxton, including the service over the branch lines which I have enumerated.

The average haul on the Erie System, or on that part of the system represented by the divisions, inclusive of the branches, would be very much less than the haul from Hammond to Croxton, which represents our longest haul. [fol. 606] Q. You have derived (arrived?) thereat something which is the mean or average transportation cost of all traffic on these several divisions, including long haul traffic, short haul traffic, including the main line traffic and branch line traffic; that is true, is it not?

A. That is true; for both expenses and freight train miles.

Q. Yes; and you likewise included in that the expense incident to handling less than carload lot freight, did you not?

A. Yes, sir.

Q. So this, then, is the mean or average cost of transporting all traffic including local, interline, long haul and short haul, main line and branch line, carload and less than carload.

A. Yes, sir.

We took the total aggregate freight expenses, divided into that the total aggregate freight train miles and got the cost per freight train mile. Our operating department advised me of the average number of cars in the trains moving freight, and I divided that total number of cars into the total freight trains to get this cost per car.

These costs per freight train mile include the cost of branch line service. Frequently these branch line trains carry very light tonnage.

In substance, I have reduced these aggregate expenses to units per freight train mile, and finally, per car mile, and have used that in attempting to determine the cost of handling deciduous fruit from Hammond to Croxton.

The allocation of maintenance cost was made on exactly the same basis as the allocation of transportation expenses, about which I have been speaking.

[fol. 607] Redirect examination:

My computations are based upon a 100% empty return movement of these refrigerator cars. Mr. C. D. Ward testified the other day that 15 per cent of these refrigerator cars go back loaded.

[fol. 608] E. V. Randol was thereupon called as a witness on behalf of the Defendants and, having been duly sworn, testified as follows:

I am Chief Clerk of the Freight Claim Accounting Bureau of the Southern Pacific Railroad.

I have made an investigation of claim payments made during the calendar year 1926 on carload shipments of citrus and fresh deciduous fruits from points in California on the Atchison, Topeka and Santa Fe Coast Lines, Los Angeles and Salt Lake Railroad, Southern Pacific Lines, Western Pacific Railroad and their short line connections destined to territory covered by Groups A and M, inclusive, and to points in Canada to which the same rates apply and compared them with the total freight revenue on the same commodities from California to the same destinations during the calendar year 1925.

As a result I have found that in that year the total freight revenue for grapes was $34,865,370 upon which claims were paid amounting to $928,467 or 2.66 per cent; the total freight revenues received from the shipment of apples was $592,629 upon which claims were paid in the sum of $15,534, or 2.62 per cent. Upon deciduous fruits other than grapes and applies the total freight revenue was $7,739,274 upon which claims were paid in the amount of $259,351 or 3.35 per cent. The total freight revenues from citrus fruits was $21,955,693 upon which claims were paid amounting to $570,574, or 2.60 per cent. The ratio of the combined figures of the Sante Fe and Southern Pacific Co., for the account of grapes to the combined freight revenue [fol. 609] was 2.57 and on deciduous fruits other than grapes and apples was 2.24 per cent. On all other classes of other traffic, including other fruits, melons and vegetables, it was but 0.58 per cent.

The ratio of the total freight revenue on these two lines in 1926 on deciduous fruits other than apples, to the total freight revenue was 5.16 per cent. The ratio of the total combined loss and damage claim payments on the same commodities to the total claim payments in 1926 on all commodities, was 91.02 per cent. The ratio of claim payments on deciduous fruit traffic, from California, to the total payments of claims on fresh fruits, melons and vegetables originating in California, is 44.1 per cent, for the Southern Pacific. For the same line the ratio of carloads of fresh deciduous fruits other than apples, to the total carloads of fresh fruits and vegetables, is 35.9 per cent.

Cross-examination:

44.1 ratio represents the ratio of the claim payments on deciduous fruits other than apples to the total claim payments on fruits, melons and vegetables, including deciduous fruits. 35.9 per cent represents the ratio of the number of carloads of deciduous fruits, other than apples, to the total number of carloads of fruits, melons and vegetables.

The percentage of claim payments to revenue upon deciduous fruits has been declining during the past three or four years.

[fol. 610] E. W. Mason was thereupon called as a witness and, having been duly sworn, testified as follows:

I am Vice-President and General Manager of the Western Pacific Railroad Company which position I have held for the past 8 years. I have had a total of 34 years railroad operating experience on the Northern Pacific and Western Pacific Railroads in various capacities from telegraph operator to General Manager. The Western Pacific operates in more favorable conditions than some of the lines in California especially in respect to grade conditions. The favorable grade has been attained by reason of longer mileage at very expensive construction.

The country traversed by the Western Pacific in crossing the Sierra Nevada Mountains causes it to travel over a 1 per cent grade to attain which many tunnels, bridges and cuts were necessary.

Numerous rises are encountered elsewhere on this line which, however, are not extensive either in the length of ascending grade although herper service is required at four points in that territory. The Western Pacific crosses the great Salt Lake over a rock fill for 11.4 miles. This requires constant effort to maintain, being subject to severe storms. The road is also constructed across a portion of the old bed of the Great Salt Lake where, by reason of the salt, considerable difficulty is experienced in excessive deterioration of rails. The line extends for 35 miles over the old bed of the lake. The Western Pacific schedule for fruit trains is 51 hours from Sacramento to Salt Lake City, that is the portion of the Western Pacific running time out of the 154 hour schedule. Between these same points [fol. 611] merchandise trains have a schedule of 60 hours. The dead freight trains operate on a 72 hour schedule. In the fruit schedule there are two icings each involving approximately an hour's delay.

To maintain these rapid schedules reduced tonnage ratings of locomotives are employed.

Special gathering service is performed for the Western Pacific in the district between Sacramento and Stockton involving the movement of one train each way for this distance of 44 miles. These trains operate at night, one dis-

tributing empties and the other gathering loads to be consolidated at Sacramento. Although the mileage here is but 44 miles traffic requires 2 trains to be operated. The crews of each get paid on the basis of 100 miles.

Other trains are operated between Stockton and Sacramento with fruit received from connections at that point and by local trains from points on the Western Pacific west of Stockton. These trains, however, owing to the time at which the traffic arrives, must be run through to Sacramento in order to leave that point on schedule and, therefore, these trains are unable to pick up the local loads between Sacramento and Stockton.

A similar special service is operated between San Jose and Niles with traffic delivered to us at San Jose.

Additional switching service is performed during the fruit season at Stockton, Sacramento, Portola, Elko and San Jose.

The gathering service between Stockton and Sacramento [fol. 612] is performed on the main line and the only points where fruit originates in substantial volume off the main line is at San Jose branch.

Considerable difficulty is encountered in procuring an adequate water supply at points on the desert between the summit of the Sierra-Nevada Mountains and Salt Lake City. Pipe lines have been constructed reaching 6 to 20 miles in length to supply this need.

In volume the traffic fluctuates very markedly between different periods of the year and is heaviest when the deciduous fruit movement is in progress. This presents a serious labor problem of the Western Pacific during the peak of the fruit traffic. The number of crews in freight service is practically doubled. The result is that during the balance of the year the engine crews almost invariably consist of two engineers, one of whom is acting as a fireman and the train crews are made up of from 2 to 4 conductors, one of whom is performing services as a brakeman. When the fruit traffic approaches its peak these men are called into service as engineers and conductors and others are recruited to serve as firemen and brakemen. As a result, the employees during the peak season are inexperienced and inefficient and difficult to obtain.

During the fruit season the demand for refrigerator cars in California requires that practically the same service be given to returning empties as is afforded the outbound loads. For this reason during the fruit season these empty cars instead of being used to fill out other trains are made up into special trains which are operated through from [fol. 613] Salt Lake to Sacramento on practically the same schedule as the eastbound fruit trains.

Certain elements of cost incurred during other months of the year are in whole or in part chargeable to the fruit traffic. As much track work as possible is done in advance of the fruit movement; practically all renewals are performed during the earlier months in the year. Claim payments in connection with the fruit traffic are susbtantial and are made principally during the months following the movement of the fruit traffic and enter into the general accounts during the period from March to June. The same is true of taxes which are charged at practically the same rate each month on the estimated tax accrual for the year.

Cross-examination:

Our heaviest charges for maintenance of way are between April and July, although our labor charges are constant throughout the year.

Our railroad is more nearly loaded to its economic capacity in the late summer and fall than in the winter and spring months. That means that our transportation expenses per unit of traffic are relatively lower in the late summer and fall than in the winter and spring. Our overhead is substantially constant throughout the various months of the year. If our overhead expenses are spread out over the volume of traffic, month by month, we would have a lower overhead expense per unit in the late summer and fall than in the winter and spring months. That is, we are spreading about the same amount of overhead over a larger amount of traffic.

The weather conditions are most favorable to economic [fol. 614] operation during the summer and fall months. Our locomotive efficiency is somewhat higher during that period than in the winter and spring.

We have a considerable empty car movement with respect to open top cars. Most of these cars move eastbound empty. We have a considerable car movement in connection with our live-stock traffic and the empty mileage of these cars is just about equal to the loaded mileage.

Over substantially the entire line we handle from 60 to 65 cars of deciduous fruit in one train by using helpers over the districts which I have enumerated.

When our freight blocks leave Sacramento for the East, they move substantially as made up at that point all the way to Salt Lake City. There are very few loads to put out and very few additions. This movement may be properly described as a main line movement practically in solid train loads from Sacramento to Salt Lake City.

Thereupon T. F. ALLEN was called as a witness on behalf of Defendants and, having been duly sworn, testified as follows:

I am Assistant Superintendent of the Southern Division of the Northwestern Pacific. I have been connected with that railroad about 14 years. It runs between Trinidad and Tiburon on San Francisco Bay. Trinidad is 30 miles north of Eureka and 313 miles from San Francisco. Trinidad and Eureka are in the State of California. Other branches are operated in connection with our line.

Our railroad handles transcontinental shipments of California deciduous fruits. During the year 1926 our railroad [fol. 615] moved 8 cars of plums, 1,326 cars of pears and 2,048 cars of grapes, a total of 3,381 cars. The pear shipments commenced to move about the middle of July and terminated around the end of August. The grapes moved from the first of September to the latter part of October. During the first part of the year 1926 we had 11 road crews in freight service and 5 yard crews. We added 5 crews in 1926 in road service and 3 crews in yard service, to handle deciduous fruit movement alone. We usually use 10 locomotives for the road crews and 3 for the yard crews, but during the deciduous fruit movement we use 4 additional for the road crews and 2 additional for the yard crews for the deciduous fruit traffic.

Cross-examination:

The 3,381 carloads of deciduous fruit which I have mentioned above moved to transcontinental destinations. We also have a considerable intrastate movement, approximating 300 cars of pears and 736 cars of grapes, in addition to the number I have stated. Practically all of our deciduous fruit originates in the southerly part of our territory.

Our pears are just about out of the way at the time our grape movement reaches a substantial degree. The result is that we have substantially a continuous flow of freight from July to the latter part of October. The principal addition to our traffic in the late summer and early fall months over the normal handling is brought about by the deciduous fruit business. Comparatively speaking, our freight tonnage is rather light during the spring and winter months. Again, comparatively speaking, we get better train efficiency in point of tonnage in the period extending [fol. 616] from July to the end of October. During this period we also have a proportionate increase of inbound commodities, such as shook, and so forth.

Thereupon E. F. Sauer was called as witness on behalf of Defendants and, having been duly sworn, testified as follows:

I am employed by the Pennsylvania Railroad System as a special agent. I have been employed by it for 40 years. I have familiarized myself with the handling of deciduous fruit traffic on the Pennsylvania System coming to the system at Chicago and St. Louis.

Deciduous fruits go from California to the East over the Pennsylvania Railroad via 2 routes, first, via Chicago, and second, via East St. Louis.

The freight handled via Chicago is handled in preference trains.

Any perishable freight received, at Chicago, as soon as 10 cars have arrived, are filled out with dead freight and forwarded through to Canton, Ohio. That includes deciduous fruit. At Canton the cars are iced and two trains are made up, one for Pittsburgh territory and one for [fol. 617] Enola and beyond. Enola is near Harrisburg,

Pa. At Enola trains are made up for 5 territories, first, Baltimore and Washington, second, Philadelphia, third, points between Philadelphia and Jersey City, fourth, Jersey City and New York, and fifth, Greenville, which is the Jersey City pier.

The preference given to perishable traffic is such that during the month of October, 1926, the peak month of the grape movement these trains between Chicago and Crestline average 21.2 miles per hour as compared to 18.9 for all preference trains and 15.8 for slow trains.

Trains received via East St. Louis are preferential trains from East St. Louis and Enola with icing stations at Indianapolis, Columbus and Huntington. At Enola these trains meet the schedule from Chicago and are broken up into trains for territories beyond.

At Pittsburgh there are produce yards handling all fruit and produce for the Pittsburgh district having 90 tracks aggregating 6 miles in length and having a total area of about 20 city blocks.

This facility is for the exclusive handling of produce.

The service in this yard requires a specially trained force of inspectors, cleaning men and delivery clerks, a much larger force than would be required for the handling of ordinary carload freight. This is also true of the number of police officers required.

The Pennsylvania and Pittsburgh yards are owned by the Pennsylvania railroad and were assessed in 1926 by Pittsburgh at $98,762.77, or $1.52 per car for only a portion [fol. 618] of the total taxes. The appraised valuation of the facility is $3,000,000 which would amount to $2.74 per car. Our company pays 2 cents a mile on private refrigerator cars rented.

Thereupon R. F. Ray was called as a witness on behalf of Defendants and, having been duly sworn, testified as follows:

I am General Supervisor of wages and work conditions in the operating department of the Denver Rio Grande, Western Railroad. I have been engaged in railroad operating work since 1909. The Denver & Rio Grande Railroad

operates in a mountainous region with precipitous slope and the only avenues of traffic are along the water courses. This necessitates the traversing of long distances between two points geographically in close proximity.

The Rocky Mountains in Colorado and Utah through which this road passes do not consist of one single general range but are composed of various branches and auxiliary ranges. It is necessary, therefore, not only to cross the divide but to cross other divides, so as to take advantage of the transportation avenues afforded by the water courses.

The curvature necessary in this road construction requires additional energy and increased transportation expense together with maintenance expense and the rate of curvature has a decided additional influence upon all of these costs.

With a mountainous region, such as the Rio Grande is, a railway can be operated and constructed only with gradi- [fol. 619] ents of abnormal intensity and of more than average extent, second, inevitable rise and fall and the impossibility of reducing the same, third, curvature is inherently necessary in mountain avenues of transportation, and, fourth, distance is greatly enhanced by the nature of the territory traversed.

Deciduous fruit trains must be moved on fast schedules and the tonnage, therefore, must be reduced from 70 to 75% below the average train load prevailing with ordinary schedules and in terminal yard operations special attention must be given to the deciduous fruit traffic in its reception and handling.

During 1926 a schedule of 42 hours and 15 minutes for California fruit was in effect between Salt Lake City and Pueblo as compared with a schedule of 61 hours for other classes of freight.

Practically all deciduous fruit is received from the Southern Pacific and Western Pacific Railroads at Salt Lake. Traffic requires 30 minutes for terminal handling which is expedited as compared with 2 hours for other classes of traffic.

The same wage cost is involved in handling deciduous fruit traffic as would be involved if we carried the maximum tonnage.

Movement of the California fruit is such that its peak occurs at the same time as the movement of deciduous fruits locally to the Rio Grande Railroad so that in the territory from Salt Lake and Grand Junction during the movement of California fruit there is a period of dense traffic and a preponderance of eastbound traffic necessitating the move-
[fol. 620] ment of light tonnage trains, or light engines, westbound. The westbound movement of empty refrigerator cars requires preferential service. This is due to shortage in refrigerator cars in California.

The Denver & Rio Grande Railroad is confronted almost throughout the year with exceptionally adverse conditions. Only three months of the year are reasonably free from the effect of rain and snowfall; and cloudbursts are frequent during the commencement of our heavy freight traffic season.

Flood waters are caused by melting of winter snows from April to June. Extremely low temperatures are experienced on the mountain sections.

All of this requires heavy expenditure for new rails, ballasting, tunnelling, improvements, grading and alignment changes and new bridges.

Cross-examination:

During certain months of the year we have substantially a full tonnage train of deciduous fruit. During the peak movement our trains are characteristically full tonnage trains, containing 45 cars each. The total wage cost of moving one of these trains over the Salt Lake City-Pueblo district is $280.65. It is a fair statement that our California fruit moves strictly as a solid train load to at least Pueblo.

The Denver & Rio Grande System Railroad has a very considerable network of branch lines, including narrow gauge mileage, the cost of transportation on which is greater per gross ton mile. As a general thing, our transportation expenses on the branch lines are higher per gross mile than upon the main line traffic. The expense of transportation is generally higher in the winter than in the summer and fall months. During summer and fall, conditions
[fol. 621] are more favorable to economical operation than during the winter and spring. Our locomotive efficiency is

higher in the summer and fall than in the winter and spring.

There is a substantial empty car movement in connection with our coal traffic.

From 1917 to 1923 very little of the California deciduous fruit moved over the Denver & Rio Grande. Since 1923, we have been receiving an increasing proportion of this traffic. In 1926 we had a heavier movement than in any prior year. I imagine that that is largely due to solicitation on the part of our company.

BERNE LEVY was thereupon called as a witness and, having been duly sworn, testified as follows:

I am Assistant General Freight Agent of the Atchison, Topeka & Santa Fe Railway Company. I have had approximately 25 years railroad experience in the accounting department in various capacities.

The past 17 years I have spent in the traffic department, handling rate matters, and the past 6 years, matters before the Interstate Commerce Commission, the Railroad Commission of California and the Arizona Corporation Commission.

The rates are blanketed from all points in California to large destination groups in the East. Originally, the rates to the territory east of Chicago were higher than those to Chicago and points west thereof. Prior to 1909 the rates to Groups D to J, roughly, the territory from Chicago to Denver, Colo., fluctuated between $1.25 and $1.15, but were thereafter stabilized at $1.15. The rates to Groups A, B and C, east of Chicago, were generally $1.40 to $1.50 until [fol. 622] 1911, when they were reduced to $1.15, the same as to Chicago and West. This rate of $1.15 was increased to $1.44 on June 25, 1918, under General Order No. 28 of the Director General of Railroads. The rates to points in the Southeast, which had been on a higher level, were placed on the same basis in 1919 by including such points in Groups A, B or C. Under the general increase of August 26, 1920, the rate to Group J, Denver territory, was increased 25 per [fol. 623] cent to $1.80, and the rate to Groups A to H, inclusive, was increased 33⅓ per cent to $1.92. The 10 per cent reduction, first established temporarily on January 1,

1922, and without limit as to time on July 1, 1922, resulted in the present rates of $1.62 to Group J and $1.73 to the other groups. Points in the Southeast were placed in Groups K, L and M on November 18, 1922, without any change in the rates.

The carload minimum was 24,000 pounds until 1911, when it was increased to 26,000 pounds, the present minimum.

The exhibit now shown to me and marked Plaintiff's Exhibit No. 165 is self-explanatory and shows the number of cars, the number of tons, the average load per car and the shipments moved via the Atchison, Topeka & Santa Fe Railway Company during respective years. The average loading for the year 1926 is greater than the year 1922. The movement of apples by the Santa Fe is negligible and the average loading of apples would not affect the average loading shown for the year 1917 upon this exhibit. The heavy loading in 1922 was occasioned by the shortage of cars. As a result the shipper when he received a car loaded it to its capacity or as close as he thought the capacity based on a safe load. In 1922 there was a heavy movement of grapes in box cars. That condition existed on the Santa Fe as strongly as it did on the other lines.

The effect upon the revenue of the carriers as a whole, which would be occasioned by a reduction in the rates asked for by the complainants in this case, in using the movement for the year 1926, would result in a reduction of approximately $6,111,779.

Thereupon there was offered and admitted in evidence Defendants' Exhibit No. 165, which is in the following form:

(Here follows Defendants' Exhibit No. 165, marked side folio page 624)

[fol. 625] Cross-examination:

In making my estimate of the effect of the proposed rate reduction upon the revenue of the carriers as a whole, I have made no apportionment of the amount of the reduction among the several lines.

In 1926 the Santa Fe Railroad moved 21,774 carloads of deciduous fruit out of the State. The total tonnage contained in these cars was 318,737 tons, an average loading of 14.63 tons.

fol. 624]

EXHIBIT No. 165

Witness: ———

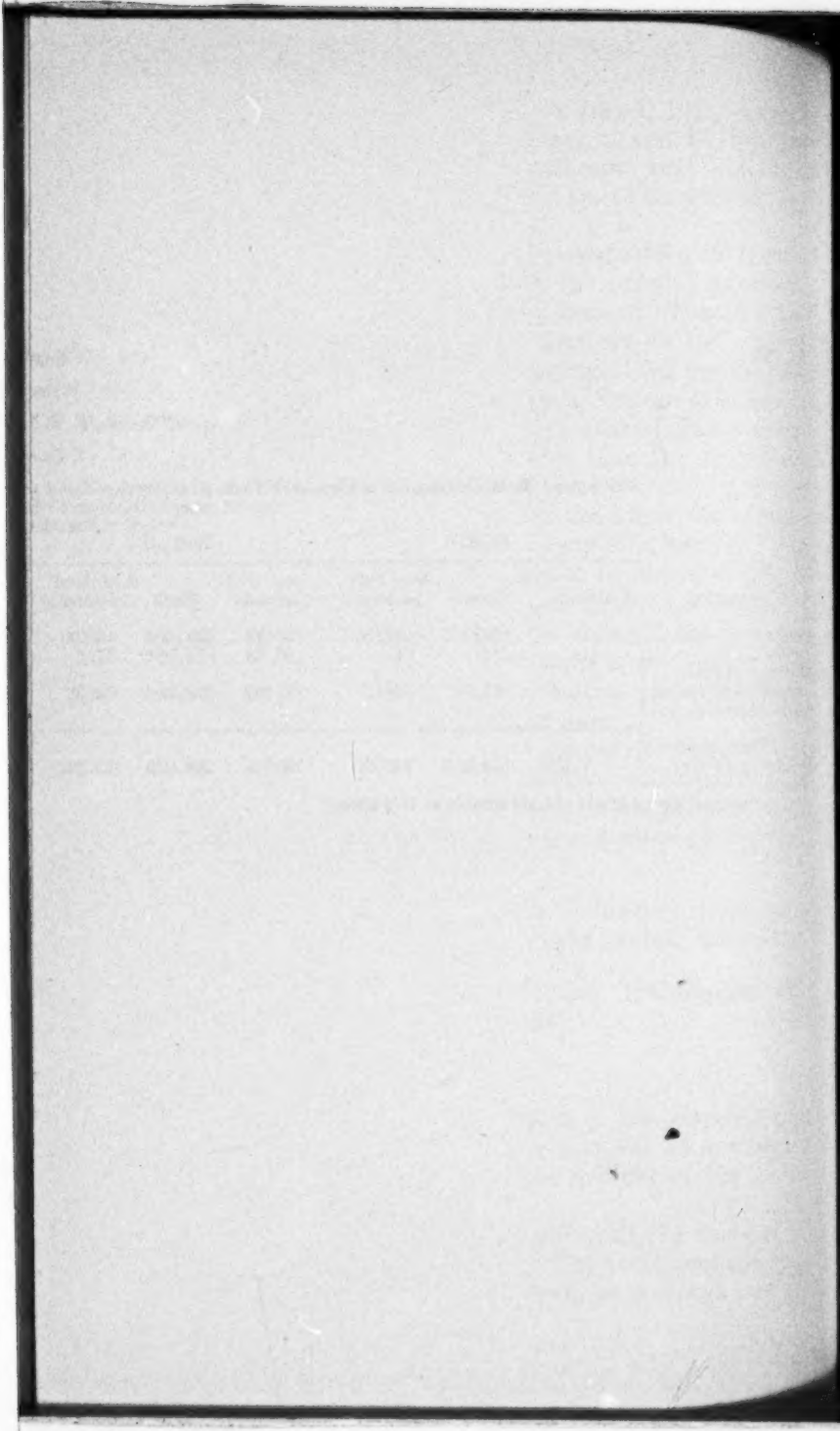
"The A. T. & S. F. Railway Company

Docket No. 19130

Statement Showing Number of Cars and Tons, Also Average Load per Carload, in Tons, of Deciduous Fruit from California to Eastern Points via the A. T. & S. F. Ry. Co. for the Years Shown For the Calendar Years

Commodity	1917			1922			1924			1925			1926		
	Carloads	Tons	Ave. load in tons	Carloads	Tons	Ave. load in tons	Carloads	Tons	Ave. load in tons	Carloads	Tons	Ave. load in tons	Carloads	Tons	Ave. load in tons
Grapes	(1)	(1)	(1)	15,176	247,064	16.27	17,213	251,543	14.61	25,569	381,166	14.91	20,524	300,214	14.62
Apples	(1)	(1)	(1)	61	1,068	17.5	153	2,719	17.80	43	772	17.95	152	2,879	18.94
Deciduous Fruits other than Grapes and Apples	(1)	(1)	(1)	1,502	20,094	13.38	2,999	42,289	14.10	2,065	28,082	13.59	1,098	15,644	14.24
Total of all Deciduous Fruits	7,628	114,293	14.98	16,739	268,226	16.02	20,365	296,551	14.56	27,677	410,020	14.81	21,774	318,737	14.63

(1) Segregation by kinds not obtainable at this time."



Thereupon J. L. FIELDING was called as witness and, having been duly sworn, testified as follows:

I am Assistant General Freight Agent, Southern Pacific Lines. I have had 18 years experience in freight traffic work.

I have made an investigation to determine the number of tons of deciduous fruits, except apples, moving from points in California to destinations involved in the complaint in this connection during the calendar year 1926.

I have prepared an exhibit which is so headed, showing the actual average car haul, average weighted haul and total revenue accruing to the carriers and average earnings, as compared with hauls, revenue and earnings on apples and citrus fruits moving from and to the same territory during the same period. This exhibit shows carload movement of fresh deciduous fruit for 1926 from California on the Atchison, Topeka & Santa Fe Railway Coast Lines, Los Angeles & Salt Lake Railroad, Southern Pacific Lines, Western Pacific Railroad and their short line connections destined to eastern defined territories shown taking Group A to M rates, inclusive, and to points in Canada, to which the same rates apply. This exhibit also shows number of [fol. 626] cars, car miles, average car haul, tons, ton miles, averave weighted haul, average weight of paying load per car, average weight per car of equipment, gross weight hauled (excluding weight chargeable to empty return), total revenue, average weighted revenue per car, average weighted revenue per car per mile, percntage of weight chargeable to empty return, total gross weight hauled (including empty return), weighted net and weighted gross ton mile earnings. Column 1 is a list of commodities; column 2 indicates the symbol of the originating line; column 3 shows the total number of loaded cars handled and column 4 reflects the consolidated information for all the lines shown at the bottom of page 1.

The total loaded car miles in this exhibit were secured by an actual check of the way bills. Column 5 shows the average loaded car haul in miles which was arrived at by dividing column 4 figures by column 3 figures. Column 6 shows total number of tons moved and was arrived at by an actual check of each waybill. Column 7 shows the

ton miles; column 8 shows the average weighted haul in miles for each of the commodities shown, which figures were arrived at by dividing the total ton miles shown in column 7 by the total number of tons shown in column 6; column 9 shows the average weight per car of paying load arrived at by dividing the number of tons shown in column 6 by the number of cars in column 3; column 10 shows the average weight of refrigerator equipment in pounds, ascertained by taking the weight of 36,473 P. F. E. cars and the weight of 17,442 S. F. R. D. cars, or a grand total of 53,895 cars [fol. 627] and 2,802,395,440 pounds, and dividing the total weight thus obtained by the total number of cars shown. The figures shown above represent the total equipment which the P. F. E. and S. F. R. D. car lines had on hand as of December 31, 1926.

[fol. 628] Column 11 shows total gross weight hauled in pounds per car in order to transport the paying load and is arrived at by adding the figures shown in columns 9 and 10;

Column 12 shows total revenue arrived at by check of waybills covering this traffic;

Column 13 shows weighted average revenue per car which is arrived at by dividing figures shown in column 12 by figures in column 3;

Column 14 shows weighted average revenue per car per mile, arrived at by dividing figures shown in column 13 by those in column 5;

Column 15 shows percentage of weight chargeable to empty return movement, arrived at by using total empty and loaded car miles of both S. F. R. D. and P. F. E. cars as shown on bottom of page 1 hereof;

Column 16 weight chargeable to empty return movement in pounds, arrived at by multiplying figures in column 10 by figure in column 15;

Column 17 shows total gross weight per car hauled, including empty return, arrived at by adding the figures shown in column 11 to those in column 16;

[fol 629] Column 18 shows weighted average revenue per ton, arrived at by dividing figures shown in column 12 by those in column 6;

Column 19 shows weighted average revenue per ton per mile in mills on paying load, arrived at by dividing figures shown in column 18 by those in column 8;

I. C. C. Docket No. 19130
Exhibit No. 166
Witness Fielding

Statement showing number of cars and tons of Deciduous Fruits (except Apples), moving from points in California to destinations involved in this complaint, during the calendar year of 1926.

Also the actual average car haul, average weighted haul, total revenue accruing to the carriers, and average earnings, as compared with hauls, revenue and earnings on Apples and Citrus Fruits moving from and to the same territories during the same period.

SAN FRANCISCO, CALIF.
MARCH 21, 1927.

DAR YEAR OF 1926 AND M
GENT). THIS STATEMEN
RIES DURING THE SAME

12	13
Total Revenue	Average Revenue per Car
,959,267	$499.36
131,469	495.60

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NDAR YEAR OF 19
S THE ACTUAL A

12	
Total Revenue	R
23,767,362	$

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LEND CAR	
12	
Tot Rever	
191,9 24,7	

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Column 20 shows weighted average revenue per ton per mile in mills on weight of paying load and weight of equipment as shown in column 11 divided into rate per car as shown in column 13, converted to a per ton figure and divided by figure shown in column 8;

Column 21 shows weighted average revenue per ton per mile in mills on paying load, weight of the car and weight chargeable to empty return movement, arrived at by dividing figure shown in column 13 by figure shown in column 17 converting figure so obtained to a per ton figure and then dividing such figure by the figure shown in column 8.

Each of the succeeding sheets is constructed in the same way as I have described page 1.

In connection with this exhibit I call attention to the light loading of deciduous fruit as shown in column 9 as compared with loading on apples and citrus fruit. I further call attention to the average revenue per car on apples and citrus fruit, which is materially greater than on deciduous fruit.

Column 14 demonstrates that the rates on deciduous fruit are not unreasonably high. It further shows the car mile earnings on apples and citrus fruit which are substantially higher than the car mile earnings on cars of deciduous [fol. 630] fruit.

Thereupon there was offered in evidence Defendant's Exhibit No. 166 which is in the following form:

(Here follows Defendant's Exhibit No. 166, marked side folio pages 631, 632, 633, and 634.)

[fol. 635] I have prepared an exhibit showing earnings on deciduous fruits moved from California producing points to destinations involved in this proceeding and compared them with earnings on other commodities to the same territory. This exhibit consists of 13 pages, each page representing one of the transcontinental groups from A to M, inclusive.

Column 1 of the exhibit is the average distance to the group which has been arrived at by using 24 representative points of origin of deciduous fruit in California and 20 representative points of destination in each group;

Column 2 shows the rate per 100 pounds in cents on both the present rate and the rate asked for;

Column 3 shows the minimum weight on each of the commodities listed;

Column 4 shows the average loading of each of the commodities listed; the average loading of these commodities is for Southern Pacific lines figured alone. It is not a consolidated figure.

Column 5 shows the average weight of equipment. The average weight of 51,000 pounds shown in Column 5 is the weight of P. F. E. freight exchange equipment. The average weight of 40,980 pounds used for weight of the equipment for hauling other traffic is ascertained from our files and include our stock and tank cars.

Column 6 shows the gross weight hauled, which figure is the column 4 and 5 added together.

Column 7 shows the average revenue per car, which is a computation of column 2 and 4.

[fol. 636] Column 8 shows the percentage of weight chargeable to empty return haul, and the method of arriving at this figure is shown on the first sheet of the exhibit. This figure is a conservative figure.

Column 9 shows the weight of equipment, in pounds, chargeable to the empty return, which figure is arrived at by multiplying column 5 by column 8.

Column 10 shows the gross weight hauled plus the weight of the equipment chargeagle to the return movement, arrived at by adding the figures shown in column 5 to those shown in column 6.

Column 11 is merely a reproduction of column 2 and shows the rate in cents per 100 pounds.

Column 12 shows the rate in cents per 100 pounds on the gross weight as shown in column 6.

Column 13 shows the rate in cents per 100 pounds on the gross weight as shown in column 10.

Column 14 shows the net ton mile revenue on the weight of the paying load, which is arrived at by dividing the figures shown in column 11 by the figures shown in column 1.

Column 15 shows the gross ton mile revenue, which is arrived at by dividing the figure shown in column 12 by the figure shown in column 1.

Column 16 shows the gross ton mile revenue, including the weight chargeable to the empty return movement, arrived at by dividing the figure shown in column 13 by the figure shown in column 1.

I. C. C. Docket No. 19130
Exhibit No. 167
Witness Fielding

STATEMENT SHOWING THE EARNINGS ON DECIDUOUS FRUIT MOVING FROM CALIFORNIA PRODUCING POINTS TO DESTINATIONS INVOLVED IN THIS COMPLAINT COMPARED WITH SIMILAR EARNINGS ON OTHER MOVING COMMODITIES.

SAN FRANCISCO, CALIF.
MARCH 18, 1927.

The percentage of distance or weight chargeable to empty return movement is arrived at in the following manner:

Total loaded freight train car miles of Pacific Fruit Express equipment on the lines of the Southern Pacific Company (Pacific Lines):

Calendar year of 1924	120,509,887 miles
Calendar year of 1925	134,380,525 miles
Calendar year of 1926	153,537,641 miles
Total of three years	408,428,053 miles

- - - - - - - - - - -

Total empty freight train car miles of Pacific Fruit Express equipment on the lines of the Southern Pacific Company (Pacific Lines):

Calendar year of 1924	74,846,744 miles
Calendar year of 1925	92,155,501 miles
Calendar year of 1926	112,554,369 miles
Total of three years	279,556,614 miles

- - - - - - - - - - -

Total loaded freight train car miles of all freight equipment (exclusive of Pacific Fruit Express equipment) on the lines of the Southern Pacific Company (Pacific Lines):

Calendar year of 1924	334,228,383 miles
Calendar year of 1925	398,466,240 miles
Calendar year of 1926	400,686,493 miles
Total of three years	1,133,381,116 miles

- - - - - - - - - - -

Total empty freight train car miles of all freight equipment (exclusive of Pacific Fruit Express equipment) on the lines of the Southern Pacific Company (Pacific Lines):

Calendar year of 1924	160,188,680 miles
Calendar year of 1925	200,198,359 miles
Calendar year of 1926	195,174,200 miles
Total of three years	555,561,239 miles

- - - - - - - - - - -

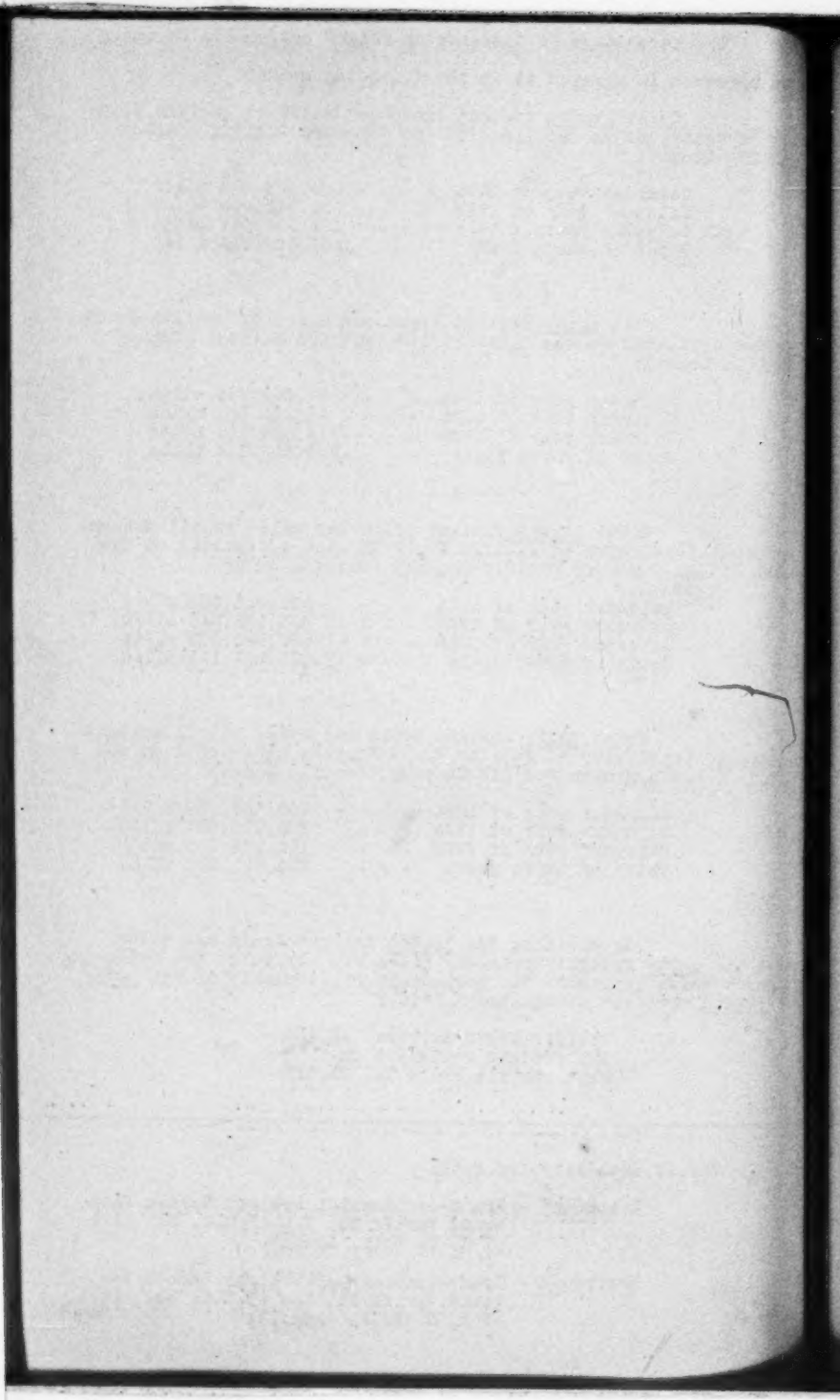
By dividing the loaded freight train car miles into the empty freight train car miles you arrive at the following figures which represent the percentage relationship of the empty to loaded movement of equipment, viz.:

Pacific Fruit Express	68.44%
All freight equipment except Pacific Fruit Ex.	49.01%

Tariff authority for rates:

Eastbound - Trans-continental Freight Bureau Eastbound Tariff No. 3-U (I.C.C. No. 1174 of H. G. Toll, Agent).

Westbound - Trans-continental Freight Bureau Westbound Tariff No. 1-A (I.C.C. No. 1177 of H. G. Toll, Agent.)



COMPARED WITH
UP "A" ON THE

10	
GROSS WEIGHT HAULED	R
PLUS WEIGHT OF EQUIPMENT CHARGEABLE TO EMPTY RETURN	W P 1
113488 114434 112008 111972 112184 113730	
113488 114434 112008 111972 112184 113730	

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EARNINGS ON OTHER.

I.C.C. DOCKET NO. 19130
EXHIBIT NO._____
WITNESS_____

11	12	13	14	15	16
ATE IN CENTS PER 100 POUNDS BASED ON			PER TON PER MILE REVENUE IN MILLS BASED ON		
EIGHT OF AYING LOAD	GROSS WEIGHT HAULED	GROSS WEIGHT HAULED PLUS EMPTY RETURN	WEIGHT OF PAYING LOAD	GROSS WEIGHT HAULED	GROSS WEIGHT HAULED PLUS EMPTY RETURN
173	60.7	42.1	13.3	4.7	3.2
173	62.1	43.1	13.3	4.8	3.3
173	58.6	40.3	13.3	4.5	3.1
173	58.5	40.3	13.3	4.5	3.1
173	58.8	40.5	13.3	4.5	3.1
173	61.1	42.3	13.3	4.7	3.3
144	50.6	35.0	11.1	3.9	2.7
144	51.7	35.9	11.1	4.0	2.8
144	48.8	33.6	11.1	3.8	2.6
144	48.7	33.5	11.1	3.7	2.6
144	49.0	33.7	11.1		

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"C", COMPARED
S IN GROUP "C"

	10
	GROSS WEIGHT HAULED PLUS WEIGHT OF EQUIPMENT CHARGEABLE TO EMPTY RETURN
	113488
	114434
	112008
	111972
	112184
	113730
	113488
	114434
	112008
	111972

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EARNINGS ON
OTHER.

I.C.C. DOCKET NO. 19130
EXHIBIT NO.
WITNESS

11	12	13	14	15	16
TE IN CENTS PER 100 POUNDS BASED ON			PER TON PER MILE REVENUE IN MILLS BASED ON		
IGHT OF ING AD	GROSS WEIGHT HAULED	GROSS WEIGHT HAULED PLUS EMPTY RETURN	WEIGHT OF PAYING LOAD	GROSS WEIGHT HAULED	GROSS WEIGHT HAULED PLUS EMPTY RETURN
3	60.7	42.1	15.5	5.4	3.8
3	62.1	43.1	15.5	5.6	3.9
3	58.6	40.3	15.5	5.3	3.6
3	58.5	40.3	15.5	5.2	3.6
3	58.8	40.5	15.5	5.3	3.6
3	61.1	42.3	15.5	5.5	3.8
4	50.6	35.0	12.9	4.5	3.1
4	51.7	35.9	12.9	4.6	3.2
4	48.8	33.6	12.9	4.4	3.0

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S COMPARED WI
ROUP "E" ON T

10	
GROSS WEIGHT HAULED	RA
PLUS WEIGHT OF EQUIPMENT CHARGEABLE TO EMPTY RETURN	W P
113488 114434 112008 111972 112184 113730	
113488 114434 112008	

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EARNINGS ON
OTHER.

I.C.C. DOCKET NO. 19130
EXHIBIT NO._____
WITNESS_____

11	12	13	14	15	16
ATE IN CENTS PER 100 POUNDS BASED ON			PER TON PER MILE REVENUE IN MILLS BASED ON		
IGHT OF YING OAD	GROSS WEIGHT HAULED	GROSS WEIGHT HAULED PLUS EMPTY RETURN	WEIGHT OF PAYING LOAD	GROSS WEIGHT HAULED	GROSS WEIGHT HAULED PLUS EMPTY RETURN
173	60.7	42.1	18.3	6.4	4.5
173	62.1	43.1	18.3	6.6	4.6
173	58.6	40.3	18.3	6.2	4.3
173	58.5	40.3	18.3	6.2	4.3
173	58.8	40.5	18.3	6.2	4.3
173	61.1	42.3	18.3	6.5	4.5
144	50.6	35.0	15.2	5.4	3.7
144	51.7	35.9	15.2	5.5	3.8
144	48.8	33.6	15.2	5.2	3.6
144	48.7	33.5	15.2	5.2	3.5

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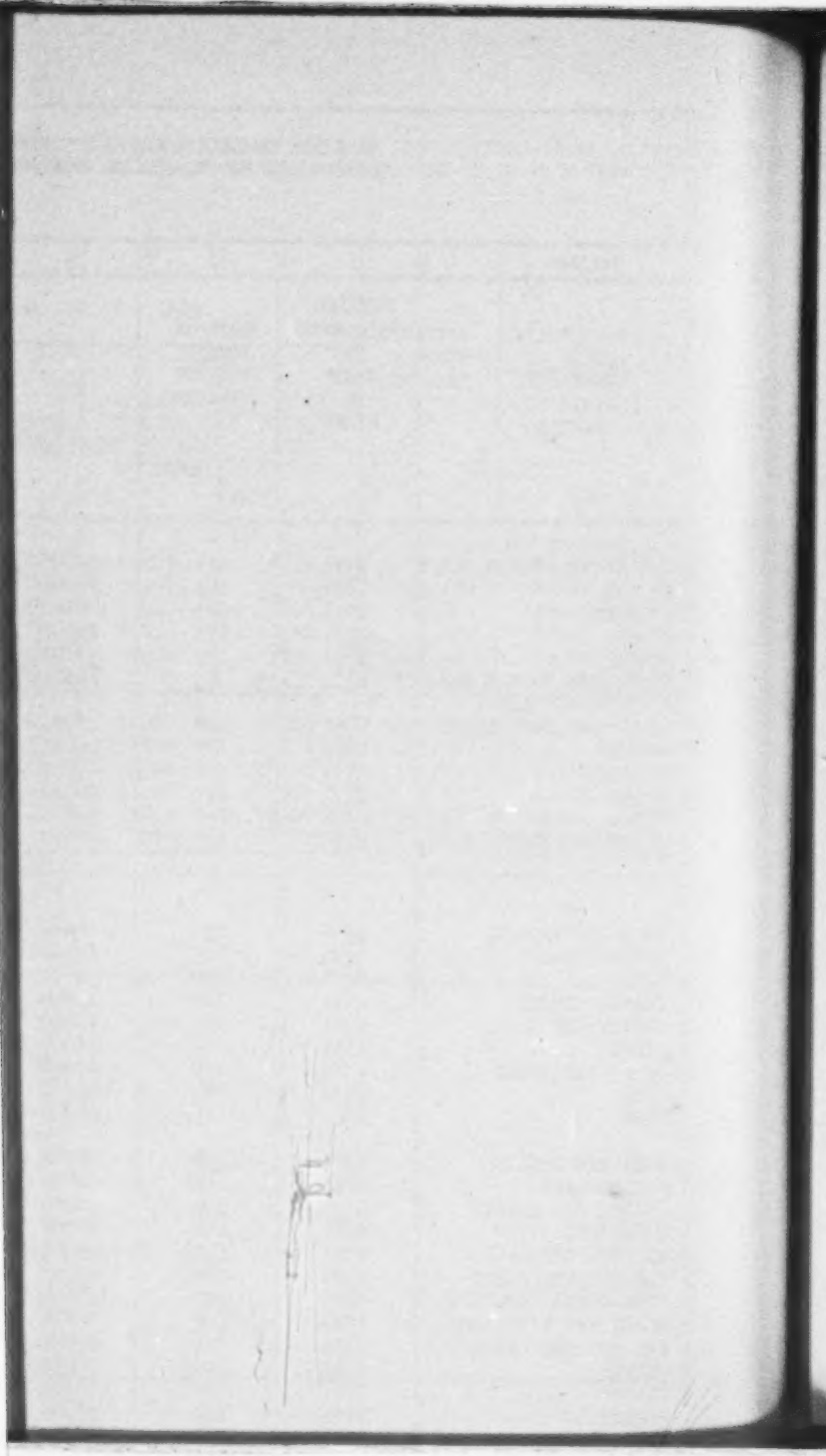

Thereupon there was offered in evidence said exhibit which was marked Defendant's Exhibit No. 167 and is in [fol. 637] the following form:

(Here follows Defendant's Exhibit No. 167, marked side folio pages 638-651, inc.)

[fol. 652] I have prepared an exhibit which is now shown to me showing the average loading of various commodities moving via the Southern Pacific Company's lines during 1926, indicating the average weight of the equipment, the total gross weight hauled and the percentage relationship of paying load to gross weight hauled on various commodities. These figures are ascertained from those regularly compiled by our accounting department and embrace commodities moving both east and westbound. It will be noted that with the exception of eggs and hops the percentage relation of paying load to gross weight is in excess of that on deciduous fruit. This exhibit covers the business moving to and from transcontinental territory involved in this case.

Thereupon there was offered and received in ev-dence the said exhibit, which was marked Defendants' Exhibit No. 168, which is in the following form:

[fol. 653] EXHIBIT No. 168

Witness: Fielding

I. C. C. Docket No. 19130

Statement Showing the Average Loading of Various Commodities Moving via Lines of Southern Pacific Company (Pacific Lines) During the Calendar Year of 1926, Showing Also the Average Weight of Equipment, Total Gross Weight Hauled, and the Percentage Relationship of Paying Load to Gross Weight Hauled

Commodity	Average weight of equipment in pounds	Average weight per car of paying load, in pounds	Total gross weight hauled, in pounds	Percentage relationship of paying load to gross weight hauled
Commodities Moving under Assailed Rates				
Deciduous Fruits, N.O.S..	51,400	27,588	78,988	34.9
Grapes	51,400	28,534	79,934	35.7
Peaches	51,400	26,108	77,508	33.7
Pears	51,400	26,072	77,472	33.7
Plums	51,400	26,284	77,684	33.8
Deciduous Fruits (All)	51,400	27,830	79,230	35.1
Comparisons				
Bags and Bagging	40,980	49,360	90,340	54.6
Dried Beans	40,980	60,450	101,430	59.6
Honey	40,980	38,502	79,482	48.4
Canned Goods	40,980	61,190	102,170	59.9
Cottonseed Cake	40,980	62,396	103,376	60.4
Fibres	40,980	38,174	79,154	48.2
Hides and Pelts	40,980	46,724	87,704	53.3
Hops	40,980	20,600	61,580	33.5
Rice	40,980	63,520	104,500	60.8
Wool (Scoured)	40,980	28,000	68,980	40.6
Plate Glass	40,980	42,660	83,640	51.0
Stoves and Ranges	40,980	40,396	81,376	49.6
Machinery	40,980	47,468	88,448	53.7
Refined Oil	46,797	71,730	118,527	60.5
Tin and Tin Plate	40,980	86,072	127,052	67.7
Structural Iron	40,980	65,866	106,846	61.6
Nails and Wire (Iron)	40,980	61,262	102,242	59.9
Bar and Rod (Iron)	40,980	63,466	104,446	60.8
Paints	40,980	52,332	93,312	56.1
Apples	51,400	36,354	87,754	41.4
Soda, Nitrate of	40,980	80,178	121,158	66.2
Borax	40,980	69,246	110,226	62.8
Dried Fruit	40,980	66,544	107,524	61.9
Oranges (Precooled)	51,400	36,760	88,160	41.7
Nuts	40,980	35,988	76,968	46.8
Onions	40,980	31,224	72,204	43.2
Eggs	51,400	28,496	79,896	35.7
Flour	40,980	58,810	99,790	58.9
Staves and Headings	40,980	61,728	102,708	60.1
Castings	40,980	69,190	110,170	62.8
Wrapping Paper	40,980	44,998	85,978	52.3
Soap	40,980	46,920	87,900	53.4
Starch	40,980	57,742	98,721	58.5
Turpentine	40,980	69,482	110,462	62.9
Barley	40,980	79,322	120,302	65.9

San Francisco, Cal., March 21, 1927.

[fol. 654] The exhibit now shown to me shows the rate of progression of the distance scale prescribed by the Interstate Commerce Commission in "Wool Rates Investigation, 1923," 91 I. C. C. 235. The rates shown in this exhibit apply from Nevada points to eastern defined territories. The scale which the Commission prescribed began at 1,500 miles and I went back to 800 miles, using the same rate of progression in cents per 100 pounds as used by the Commission for distances between 1,500 and 2,000 miles. The difference in rates per 100 pounds for each 50 miles to and including 2,000 miles is 5 cents; from 2,000 miles to 2,800 miles, 4 cents; beyond that figure, it is 3 cents for each 50 miles.

Thereupon, there was offered and received in evidence said exhibit, which was marked, Defendants' Exhibit No. 169, and is in the following form:

[fol. 655]

EXHIBIT No. 169

Witness: Fielding

I. C. C. Docket No 19130

Statement Showing the Rate of Progression of the Distance Scale Prescribed by the Interstate Commerce Commission in 'Wool Rates Investigation, 1923" (in the matter of Rates on Wool and Mohair from Pacific Coast and Intermediate Territory to Various Points, 91 I. C. C. 235) for Application on Wool and Mohair, in Carloads, from Pacific Coast and Intermountain Territory to Destinations in Eastern Defined Territory

Distance, in miles	Rate per 100 pounds	Earnings per ton per mile	Difference in miles	Difference in rate per 100 pounds	Earnings per ton per mile under spread	Ration of ton-mile earnings for 3,000 miles to ton per mile earnings for shorter distances
	(cents)	(mills)		(cents)	(mills)	(percentages)
800	70	17.50	50	5	20.00	100.5
850	75	17.64	50	5	20.00	99.7
900	80	17.77	50	5	20.00	99.0
950	85	17.89	50	5	20.00	98.3
1,000	90	18.00	50	5	20.00	97.7
1,050	95	18.09	50	5	20.00	97.2
1,100	100	18.18	50	5	20.00	96.8
1,150	105	18.26	50	5	20.00	96.3
1,200	110	18.33	50	5	20.00	96.0
1,250	115	18.40	50	5	20.00	95.6
1,300	120	18.46	50	5	20.00	95.3
1,350	125	18.51	50	5	20.00	95.0
1,400	130	18.57	50	5	20.00	94.7
1,450	135	18.62	50	5	20.00	94.5
1,500	140	18.66	50	5	20.00	94.3
1,550	145	18.71	50	5	20.00	94.0
1,600	150	18.75	50	5	20.00	93.8
1,650	155	18.78	50	5	20.00	93.7
1,700	160	18.82	50	5	20.00	93.5
1,750	165	18.85	50	5	20.00	93.3
1,800	170	18.88	50	5	20.00	93.2
1,850	175	18.91	50	5	20.00	93.0
1,900	180	18.94	50	5	20.00	92.9
1,950	185	18.97	50	5	20.00	92.7
2,000	190	19.00	50	5	20.00	92.6
2,050	194	18.92	50	4	16.00	93.0
2,100	198	18.85	50	4	16.00	93.3
2,150	202	18.79	50	4	16.00	93.6
2,200	206	18.72	50	4	16.00	94.0
2,250	210	18.66	50	4	16.00	94.3
2,300	214	18.61	50	4	16.00	94.5
2,350	218	18.55	50	4	16.00	94.8
2,400	222	18.50	50	4	16.00	95.1
2,450	226	18.44	50	4	16.00	95.4
2,500	230	18.40	50	4	16.00	95.6
2,550	234	18.35	50	4	16.00	95.9
2,600	238	18.30	50	4	16.00	96.1
2,650	242	18.26	50	4	16.00	96.3
2,700	246	18.22	50	4	16.00	96.6
2,800	252	18.00	100	6	12.00	97.7
2,900	258	17.79	100	6	12.00	98.9
3,000	264	17.60	100	6	12.00	100.0

NOTE.—Rates for distances under 1,500 miles have been made at the same rate of progression in cents per 100 pounds as used by the Interstate Commerce Commission for distances between 1,500 miles and 2,000 miles.

[fol. 656] The scale applied in this case and shown upon this exhibit applies over all the transcontinental lines of the defendant in this case as far east as Boston, Massachusetts.

I have prepared an exhibit showing the comparative level of eastern and transcontinental deciduous fruit rates and charges that would result from California producing territory to eastern destinations if rates and charges applicable between eastern points selected for the purpose of comparison by witness Ackerman were projected to 2,909 miles using the rate of progression prescribed by the Interstate Commerce Commission in the Wool Rates case. That is the exhibit shown to me now and in which I have used the rates shown in Complainants' Exhibits 77, 84, 86, 88, 90, 92 and 98 and have projected them on the same rate theory by using the scale prescribed in the Wool Case. It will be noted that the rates arrived at by using the Wool Scale are materially higher than those which would result by the use of the Cottonseed Scale used by the complainant and would exceed $1.73 per 100 pounds.

Thereupon said exhibit was offered and received in evidence as Defendants' Exhibit No. 170 and is in the following form:

[fol. 657]

EXHIBIT No. 170

Witness: Fielding

I. C. C. Docket No. 19130

"Statement Showing Comparative Level of Eastern and Transcontinental Deciduous Fruit Rates and Charges that Would Result from California Producing Territory to Eastern Destinations if Rates and Charges Applicable Between Eastern Points Were Projected to 2,909 Miles, Using Rate of Progression Prescribed by the Interstate Commerce Commission in "Wool Rates Investigation, 1923" (In the Matter of Rates on Wool and Mohair from Pacific Coast and Intermediate Territory to Various Points, 9 I. C. C. 235).

Commodity	Complainants' exhibit number	Average distance, in miles	Average rate in cents per 100 pounds	Average revenue per gross ton-mile, in mills	Rates in cents per 100 pounds	Revenue per car per mile, in cents	Revenue per car	Revenue per gross ton-mile, in mills
Pears	77	1119.5	98.60	5.38	200.9	20.72	$602.85	5.18094
Peaches, pears, plums & persimmons	84	858.3	92.24	6.24	239.6	24.71	718.83	6.17760
Concord grapes	84	858.3	92.24	6.24	239.6	24.71	718.83	6.17760
Concord grapes	86	805.6	87.04	6.64	256.8	26.48	770.31	6.62008
Peaches	88	920.0	98.00	5.68	216.6	22.33	649.69	5.58344
Peaches	90	1080.0	103.59	6.01	225.7	23.27	676.95	5.81768
Peaches	92	836.7	88.25	6.12	236.7	24.40	709.99	6.10164
Peaches	92	765.0	90.90	6.92	269.7	27.81	809.24	6.95460
Pineapples	98	1159.0	99.50	5.56	207.0	21.35	621.08	5.33760

March 28th, 1927."

[fol. 658] The Interstate Commerce Commission has also laid down a scale applying eastward from Pacific Coast points to transcontinental destinations, called the Fertilizer Scale, reported at 91 I. C. C. 228. It applies from Nevada points to distances 2,800 miles in transcontinental territory, eastern defined territory.

I have prepared an exhibit which is now shown to me based upon the same percentage relationship as used by witness Ackerman, using for a base the Fertilizer Scale. That is the statement now shown to me.

Thereupon said statement was offered and admitted in evidence and marked Defendants' Exhibit No. 171 and is in the following form:

[fol. 659]

EXHIBIT No. 171
Witness: Fielding
I. C. C. Docket No. 19130

"Statement Showing the Rate of Progression of the Distance Scale Prescribed by the Interstate Commerce Commission in Calvada Fertilizer Company vs. Southern Pacific Company (73 I. C. C. 496), Pacific Guano & Fertilizer Company (91 I. C. C. 228) and M. G. Lewis, J. J. Lewis, F. J. Jones, and F. B. Hill, Copartners, Doing Business as Pacific Manure & Fertilizer Company, vs. Aberdeen & Rockfish Railroad Company et al. (95 I. C. C. 430) for Application on Manure, in Carloads, from Perth and Lovelock, Nevada, to Destinations in California and Eastern Defined Territory.

Distance in miles	Rate per ton of 2,000 pounds	Earnings per ton per mile	Difference in: Miles	Difference in: Rate in cents per ton of 2,000 pounds	Earnings per ton per mile under spread	Ratio of ton-mile earnings for 3,000 miles to ton per mile earnings for shorter distances
	(cents)	(mills)			(mills)	(percentages)
800	780	9.75	50	30	6	71.8
850	810	9.53	50	30	6	73.4
900	840	9.33	50	30	6	75.0
950	870	9.15	50	30	6	76.5
1,000	900	9.00	50	30	6	77.8
1,050	930	8.85	50	30	6	79.1
1,100	960	8.72	50	30	6	80.2
1,150	990	8.61	50	30	6	81.3
1,200	1020	8.50	50	30	6	82.4
1,250	1050	8.40	50	30	6	83.3
1,300	1080	8.31	50	30	6	84.2
1,350	1110	8.22	50	30	6	85.2
1,400	1140	8.14	50	30	6	86.0
1,450	1170	8.07	50	30	6	86.7
1,500	1200	8.00	50	30	6	87.5
1,550	1230	7.94	50	30	6	88.2
1,600	1260	7.88	50	30	6	88.8
1,650	1290	7.82	50	30	6	89.5
1,700	1320	7.76	50	30	6	90.2
1,750	1350	7.71	50	30	6	90.8
1,800	1380	7.67	50	30	6	91.3
1,850	1410	7.62	50	30	6	91.9
1,900	1440	7.58	50	30	6	92.3
1,950	1470	7.54	50	30	6	92.8
2,000	1500	7.50	50	30	6	93.3
2,050	1530	7.46	50	30	6	93.8
2,100	1560	7.43	50	30	6	94.2
2,150	1590	7.40	50	30	6	94.6
2,200	1620	7.36	50	30	6	95.1
2,250	1650	7.33	50	30	6	95.5
2,300	1680	7.30	50	30	6	95.9
2,350	1710	7.28	50	30	6	96.2
2,400	1740	7.25	50	30	6	96.6
2,450	1770	7.22	50	30	6	97.0
2,500	1800	7.20	50	30	6	97.2
2,550	1830	7.18	50	30	6	97.5
2,600	1860	7.15	50	30	6	97.9
2,650	1890	7.13	50	30	6	98.2
2,700	1920	7.11	50	30	6	98.5
2,750	1950	7.09	50	30	6	98.7
2,800	1980	7.07	50	30	6	99.0
2,850	2010	7.05	50	30	6	99.3
2,900	2040	7.03	50	30	6	99.6
2,950	2070	7.02	50	30	6	99.7
3,000	2100	7.00	50	30	6	100.0

San Francisco, Cal., March 28, 1927."

[fol. 660] It will be noted from the exhibit that the progression of the scale remains constant from 800 miles to 3,000 miles and that the rate of progression applies for each 50 miles advance in the distance at the rate of 1½ cents per 100 pounds. I call attention to the earnings per ton per mile shown in Exhibit No. 171 from which it will be seen that as the distance increases the rate per ton per mile decreases. These two scales were fixed by the Interstate Commerce Commission to the same general territory as is involved in this case.

I have prepared an Exhibit similar to Exhibit no. 170 on the Fertilizer Scale. In it I have used the same method used by the witness Ackerman, the same mileage and the same rates. I do not mean the same method, but mean that I used the Commission's scale or ratio of progression shown in projecting these rates. That is to say, in the exhibit I have used Complainant's Exhibits Nos. 77, 84, 86, 88, 90, 92 and 98, taking therefrom the distance, the rate, the average revenue per gross ton mile, and arrived at the rates which would be derived from using the percentages shown on my Exhibit No. 171. These exhibits are offered to show that in certain other decisions of the Commission, instead of the method used by the witness Ackerman, the Commission has approved the method used in that exhibit for rate making.

Thereupon there was offered and admitted in evidence Defendants' Exhibit No. 172, which is in the following form:

[fol. 661]

EXHIBIT No. 172

Witness: J. L. Fielding

I. C. C. Docket No. 19130

Statement Showing Comparative Level of Eastern and Transcontinental Deciduous Fruit Rates and Charges That Would Result from California Producing Territory to Eastern Destinations if Rates and Charges Applicable Between Eastern Points Were Projected to 2,909 Miles, Using Rate of Progression Prescribed by the Interstate Commerce Commission in Calivada Fertilizer Company vs. Southern Pacific Company (73 I. C. C. 496), Pacific Guano & Fertilizer Company vs. Southern Pacific Company (91 I. C. C. 228), and M. G. Lewis, J. J. Lewis, F. J. Jones, and F. B. Hill, Copartners, Doing Business as Pacific Manure & Fertilizer Company vs. Aberdeen & Rockfish Railroad Company et al. (95 I. C. C. 430)

Commodity	Complainants' exhibit number	Average distance in miles	Average rate in cents per 100 pounds	Average revenue per gross ton-mile, in mills	Rates in cents per 100 pounds	Revenue per car per mile in cents	Revenue per car	Revenue per gross ton-mile, in mills
Pears	77	1119.5	98.60	5.38	169.7	17.49	$508.95	4.37394
Peaches, pears, plums & persimmons	84	858.3	92.24	6.24	181.6	18.72	544.56	4.68000
Concord grapes	84	858.3	92.24	6.24	181.6	18.72	544.56	4.68000
Concord grapes	86	805.6	87.04	6.64	189.0	19.49	567.11	4.87376
Peaches	88	920.0	98.00	5.68	168.5	17.38	505.61	4.34520
Peaches	90	1080.0	103.59	6.01	187.0	19.28	560.86	4.82002
Peaches	92	836.7	88.25	6.12	174.2	17.96	522.70	4.49208
Peaches	92	765.0	90.90	6.92	192.7	19.87	578.14	4.96856
Pineapples	98	1159.0	99.50	5.56	177.7	18.32	533.10	4.58144

March 28th, 1927.

[fol. 662] I am familiar with the rate on bananas from Gulf Ports to Pacific Coast destinations of $1.87½ referred to in Complainant's Exhibit No. 64. This rate is low for the transportation of bananas. In 1897 the rate of $1.25 was established to meet water competition from the Hawaiian Island, but it is not as strong as it was in the early days when the rate was put in, because that rate had the effect of forestalling the competition although the water competition on bananas is increasing from Central America and the West Coast of Mexico, so that the competition today from Hawaii, though not as intense as 25 years ago, has been transferred to the West Coast of Central America and Mexico, moving into the Pacific Coast ports by water. The comparative car mile revenue on bananas under the $1.87½ rate, is 18.9 cents, and under the deciduous fruit rate, as shown, 16.50 cents on all deciduous fruits except apples, and 16.64 on grapes, so that the average car mile earnings on bananas from New Orleans to the Pacific Coast, is materially higher than on deciduous fruits from California to eastern defined territory. The bananas earnings are based upon the weighted average haul of 2,151 miles in connection with the Arizona and California traffic, and on an average load of 21,600 pounds. Bananas moved from Gulf ports to the Pacific Coast under the $1.87½ rate use refrigerator cars, moving from the East to California, which would otherwise move empty.

The Southern Pacific Company considers the deciduous fruit traffic to transcontinental destinations of the greatest importance. The ratio which the revenue from our movement of deciduous fruit involved in this case bears to our total freight revenue from all sources, is 6.2 percent. Three other classes of traffic bear a revenue relationship to total [fol. 663] traffic in excess of 6.24 per cent. These are forest products, including both intrastate and interstate movement, which bear a relationship of 14.7 per cent, mineral oil 10.92 per cent, and less than carload traffic, 9.33 per cent. On a tonnage basis, the Pacific System of the Southern Pacific has on only one other commodity that might exceed the perishable freight business, and that is, lumber and its products. Expressed in revenue, the total perishable fruit traffic of the Southern Pacific Company, including Citrus Fruit, deciduous fruit, grapes, bananas and

apples, amounts to 12.08 per cent of the entire freight revenue. The total revenue derived by the Southern Pacific from perishable fruit and vegetable traffic amounts to 21 per cent of the entire freight revenue.

Cross-examination:

Referring to Exhibit No. 167, there is a movement of all the commodities mentioned therein from California to Group A9. The movement of bags and bagging over the Southern Pacific from California to Group A would be very slight. I would be surprised if there were any movement. There is a small movement of dried beans from California to Group A, amounting to approximately 40 or 50 cars. The movement of honey amounts to approximately 103 tons. The canned goods movement to Group A is quite heavy, aggregating approximately 9,600 tons. There is no cottonseed cake movement. The movement of fiber to Group A amounts to 34 tons. Approximately 1,900 tons of hides and pelts are moved to Group A. Hops are light, aggregating 146 tons. About 88 tons of rice are moved to Group A. Approximately 3,100 tons of scoured wool are moved to Group A. Everything which I have shown in this exhibit moving westward to California, is a product of manufac- [fol. 664] ture. The movement to California from Group A points by rail of these commodities, is relatively small as compared to the movement of California deciduous fruits eastbound.

There is no water competition on California deciduous fruit to the East that I know of, but there is competition on our manufactured commodities here listed from Group A points to California. Those rates are made to meet water competition in most cases.

Referring to Exhibit No. 168, it is true that in the case of practically all fruits and vegetables, the percentage relationship of the paying load to the gross weight hauled, is lower than in the case of manufactured commodities.

Referring to Exhibit No. 169, I have taken the rate which the Commission fixed for distances of 1,500 miles and under, and scaled it back rateably until I arrived at a distance of 800 miles. The Commission, in using this scale, prescribed a scale of 1,500 miles and under, but did not grade them back and the Commission did not state that they should

be graded back. In the scale prescribed by the Commission there is no rate for distances under 1,500 miles; there is no 70 cent rate prescribed by the Commission in that scale and the rate for the 800 miles haul under that table would be $1.40. Ordinarily taking into consideration the same transportation and operating conditions, and basing the rate on a reasonable figure, I would not say that the earnings per ton mile under the rate for 800 miles should be lower than the earnings per ton mile under the rate for 3,000 miles. I do not believe that there is any material movement of fertilizer under the rates shown in Exhibit No. 171 to points lying easterly from the Missouri River.

[fol. 665] The movement of bananas in 1925, over the Southern Pacific from New Orleans to California, amounted to approximately 40,825 tons. The corresponding movement to Arizona and New Mexico was 1,780 tons, and to Oregon and Washington 3,390 tons. These bananas ordinarily come from New Orleans in special banana trains.

The perishable traffic from California to eastern defined territories, including deciduous fruit, citrus fruit, cantaloupes and fresh vegetables, far exceeds the eastbound tonnage yielded the Southern Pacific Company by any other traffic. This perishable traffic also furnishes us with a very large tonnage of canned goods and dried fruit.

There is no movement of bananas via the Santa Fe. In 1925, 11,150 tons of bananas were received by water at the ports of San Francisco Bay and Los Angeles. For the first nine months in 1926, 9,756 tons were received at the same ports.

Thereupon JOHN F. BON was called as a witness on behalf of the Defendants and, having been duly sworn, testified as follows:

I am Assistant General Freight Agent of the Western Pacific Company. I have had 20 years' experience in rail-

[fol. 665a] road work as clerk, stenographer, rate clerk, chief clerk and in my present position.

The average haul on all deciduous fruit, except apples, transported by the Western Pacific road during the year 1926 was 3,136 miles.

I have prepared a statement consisting of one sheet, showing the number of cars of fresh deciduous fruit, except apples, handled by the Western Pacific, and certain information with respect to such traffic for the years 1917, 1922, 1924, 1925 and 1926.

Said statement was thereupon offered and admitted in evidence as Exhibit No. 174 and is in the following form:

[fol. 666]

EXHIBIT No. 174

Witness: Bon

THE WESTERN PACIFIC RAILROAD COMPANY

Statement Showing Number of Cars of Fresh Deciduous Fruit (Except Apples) Handled by W. P. R. R. from Points on Its Own Line and Short Line Connections from California to Transcontinental Destinations

Commodity	1917		1922		1924		1925		1926	
	Cars	(1) Average weight per car (tons)	Cars	Average weight per car (tons)	Cars	Average weight per car (tons)	Cars	Average weight per car (tons)	Cars	Average weight per car (tons)
Grapes	423	15.00	2993	16.85	4750	14.24	5401	14.55	5281	14.38
Peaches	....	.....			69	13.05	175	13.41	25	13.16
Pears	....	.....			526	13.10	526	13.05	1029	13.09
Plums	....	.....	221	13.31	55	13.07	55	13.11	73	13.15
Apricots	....	.....			4	13.00	5	13.20	.....	.....
Deciduous Fruits N. O. S.	(2) 4	15.75			133	13.22	332	13.57	235	13.78
Total	427	15.07	3214	16.61	5537	14.08	6494	14.33	6643	14.15

(1) Does not include cars from points on Tidewater Southern Ry.
(2) Except Apples.

San Francisco, Calif., March 1, 1927.

[fol. 667] Exhibit No. 174 shows the average loading per car during the years mentioned.

I have also prepared a statement showing the carload rates, minimum weights, mileages and earnings on deciduous fruits from points in various states to the destinations named thereon.

Thereupon, said statement was offered and received in evidence and marked Defendants' Exhibit No. 175, which said exhibit is in the following form:

[fol. 668]

EXHIBIT No. 175

Witness: Bon

I. C. C. Docket 19130

Statement Showing Carload Rates, Minimum Carload Weights, Mileages, Earnings per Ton-mile on Deciduous Fruits, Except Apples, from Points in California, Oregon, Washington, Utah, Colorado, Texas, Georgia, Arkansas, Michigan, Pennsylvania, New York, Idaho

Rates in cents per 100 pounds.

Revenue in cents per ton-mile.

San Francisco, Calif., March 15, 1927.

[fol. 669]

Deciduous Fruits

A-Min. Carload Weight, 26,000 Lbs.
B-Min. Carload Weight, 24,000 Lbs.

	From					
	Hood River Ore., Yakima, Wash., on U. P. System		Emmett, Ida., on U. P. System		Provo, Utah, on D. & R. G. W.	
	(A)	(1)	(B)		(B)	
To	Rates	Miles	Rates	Miles	Rates	Miles
Denver, Colo.	158	1343	112½	937	106	701
Kansas City, Mo.	169	1830	135	1447	135	1204
Omaha, Nebr.	169	1733	135	1337	135	1239
St. Louis, Mo.	187½	2260	142½	1743	142	1487
Chicago, Ill.	187½	2211	150	1817	150	1735
Cleveland, Ohio	187½	2568	187½	2174	173	2092
Pittsburgh, Pa.	187½	2679	187½	2285	173	2024
New York, N. Y.	187½	3190	187½	2725	173	2540

(1) Mileage shown is from Hood River. Yakima is 3 miles greater.

[fol. 670] Deciduous Fruits

Minimum Carload Weight, 24,000 Lbs.

	From			
	Palisade, Colo., on D. & R. G. W.		Grand Jct., Colo., on D. & R. G. W.	
To	Rates	Miles	Rates	Miles
Denver, Colo.	84½	437	84½	450
Kansas City, Mo.	135	940	135	952
Omaha, Nebr.	135	975	135	987
St. Louis, Mo.	135	1223	135	1235
Chicago, Ill.	150	1471	150	1483
Cleveland, Ohio	173	1829	173	1841
Pittsburgh, Pa.	173	1760	173	1722
New York, N. Y.	173	2276	173	2288

[fol. 671] Peaches

Minimum Carload Weight, 20,000 Lbs.

	From					
	Fort Valley, Georgia, on C. of Ga. Ry.		Clarksville, Arkansas, on M. P. R. R.		Highland, Arkansas, on P. & N. W. R. R.	
To	Rates	Miles	Rates	Miles	Rates	Miles
Kansas City, Mo.	128	987	61	417	74½	635
Omaha, Nebr.	131½	1122	.....	.....	.....	.....
St. Louis, Mo.	86	708	67	444	74½	474
Chicago, Ill.	98	863	83½	730	90	760
Cleveland, Ohio	98	850	118½	980	126½	1010
Pittsburgh, Pa.	103	918	128½	1056	136½	1086
New York, N. Y.	124½	983	163	1496	163	1526

[fol. 672] Grapes

Minimum Carload Weight, 20,000 Lbs.

	From			
	North East, Pa., on N. Y. C. & St. L.		Portland, N. Y., on N. Y. C. & St. L.	
To	Rates	Miles	Rates	Miles
St. Louis, Mo.	104	651	104	673
Chicago, Ill.	83	450	83	472
Cleveland, Ohio	48	111	48	133
Pittsburgh, Pa.	64½	175	64½	197
New York, N. Y.	74½	469	74½	447
	Lawton, Mich., on M. C. R. R.		Paw Paw, Mich., on P. M. Ry.	
St. Louis, Mo.	75	419	77	454
Chicago, Ill.	51	124	51½	164
Cleveland, Ohio	66½	269	69	391
Pittsburgh, Pa.	77½	400	82	522
New York, N. Y.	117	850	117	933

Rates from Michigan to New York, N. Y., are commodity—all other rates are class.

[fol. 673] Peaches

Minimum Carload Weight, 20,000 Lbs.

	From			
	Athens, Tex. Ingleside, " Frankston, " Jacksonville, "		Benton Harbor, Mich., on Michigan Central R. R.	
To	Rates	Miles	Rates	Miles
Dnever, Colo.	94	913	.....	.....
Kansas City, Mo.	96	721	127½	734
Omaha, Neb.	96	920	.....	.....
St. Louis, Mo.			75	452
Chicago, Ill.			47½	102
Cleveland, O.			70	247
Pittsburgh, Pa.			82	446
New York, N. Y.			114½	937

Mileage from Texas is from Athens.
Rates from Texas are commodity rates.
Rates from Michigan to St. Louis, commodity; other points, class.

[fol. 674] Rates, Miles and Revenue per Ton-mile

	To					
	Denver, Colorado			Kansas City, Mo.		
From	Rates	Miles	Revenue per ton-mile	Rates	Miles	Revenue per ton-mile
(1) California X	162	1332	2.43	173	1972	1.75
(1) Emmett, Ida.	112½	937	2.40	135	1447	1.17
(1) Yakima, Wash.	158	1346	2.27	169	1833	1.85
(1) Provo, Utah.	106	701	3.08	135	1204	2.24
(1) Palisade, Colo.	84½	437	3.75	135	940	2.87
(2) Clarksville, Ark.				61	417	2.92
(2) Highland, Ark.				74½	635	2.34
(2) Ft. Valley, Ga.				128	987	2.58
(2) Benton Harbor, Mich.				127½	734	3.47
(2) Athens, Tex.	94	913	2.05	96	721	2.66

X Average distance from California based on 742 miles to Ogden.
(1) Applies on deciduous fruit, except apples.
(2) Applies on peaches.
(3) Applies on grapes.

[fol. 675] Rates, Miles, and Revenue per Ton-mile

To

From	Omaha, Nebraska Rates	Miles	Revenue per ton-mile	St. Louis, Mo. Rates	Miles	Revenue per ton-mile
(1) California X	173	1732	2.00	173	2251	1.53
(1) Emmett, Ida	135	1337	2.02	142½	1743	1.63
(1) Yakima, Wash	169	1736	1.95	187½	2263	1.65
(1) Provo, Utah	135	1239	2.17	142	1487	1.91
(1) Palisade, Col	135	975	2.77	135	1223	2.20
(2) Clarksville, Ark				67	444	3.01
(2) Highland, Ark				74½	474	3.14
(2) Ft. Valley, Ga	131½	1122	2.34	86	708	2.42
(3) North East, Pa				104	651	3.19
(3) Portland, N. Y				104	673	3.09
(2) Benton Harbor, Mich				75	452	3.31
(3) Lawton, Mich				75	419	3.58
(3) Paw Paw, Mich				77	454	3.39
(3) Athens, Tex	96	920	2.08			

X Average distance from California based on 742 miles to Ogden.
(1) Applies on deciduous fruit, except apples.
(2) Applies on peaches.
(3) Applies on grapes.

[fol. 676] Rates, Miles and Revenue per Ton-mile

To

From	Chicago, Illinois Rates	Miles	Revenue per ton-mile	Cleveland, Ohio Rates	Miles	Revenue per ton-mile
(1) California X	173	2220	1.55	173	2577	1.34
(1) Emmett, Ida	150	1817	1.65	187½	2174	1.72
(1) Yakima, Wash	187½	2214	1.69	187½	2571	1.46
(1) Provo, Utah	150	1735	1.72	173	2092	1.65
(1) Palisade, Colo	150	1471	2.04	173	1829	1.89
(2) Clarksville, Ark	83½	730	2.19	118½	980	2.41
(2) Highland, Ark	90	760	2.36	126½	1010	2.54
(2) Ft. Valley, Ga	98	863	2.27	98	850	8.39
(3) North East, Pa	83	450	3.68	48	111	8.64
(3) Portland, N. Y	83	472	3.51	48	133	7.21
(2) Benton Harbor, Mich.	47½	102	9.31	70	247	5.67
(3) Lawton, Mich	51	124	8.22	66½	269	4.94
(3) Paw Paw, Mich	51½	164	6.82	69	391	3.52

X Average distance from California based on 742 miles to Ogden.
(1) Applies on deciduous fruit, except apples.
(2) Applies on peaches.
(3) Applies on grapes.

[fol. 677] Rate, Miles and Revenue per Ton-mile

From	To Pittsburgh, Pa. Rates	Miles	Revenue per ton-mile	To New York, New York Rates	Miles	Revenue per ton-mile
(1) California X	173	2705	1.28	173	3218	1.07
(1) Emmett, Ida.	187½	2285	1.60	187½	2725	1.37
(1) Yakima, Wash.	187½	2682	1.40	187½	3190	1.17
(1) Provo, Utah	173	2024	1.70	173	2540	1.36
(1) Palisade, Colo.	173	1760	1.96	173	2276	1.52
(2) Clarksville, Ark.	128½	1056	2.43	163	1496	2.18
(2) Highland, Ark.	136½	1086	2.51	163	1526	2.13
(2) Ft. Valley, Ga.	103	918	2.24	124½	986	2.53
(3) North East, Pa.	64½	175	7.37	74½	469	3.17
(3) Portland, N. Y.	64½	197	7.37	74½	447	3.33
(2) Benton Harbor, Mich.	82	446	3.67	114½	937	2.44
(3) Lawton, Mich.	77½	400	3.87	117	850	2.75
(3) Paw Paw, Mich.	82	522	3.16	117	933	2.50

X Average distance from California based on 742 miles to Ogden.
(1) Applies on deciduous fruit, except apples.
(2) Applies on peaches.
(3) Applies on grapes.

[fol. 678] Rates, Miles and Revenue per Ton-mile

To	From California X (1) Rates	Miles	Revenue per ton-mile	From Springdale, Ark. (3) Rates	Miles	Revenue per ton-mile
Denver, Colo.	162	1332	2.43	121½	902	2.69
Kansas City, Mo.	173	1972	1.75	81	309	3.94
Omaha, Nebr.	173	1732	2.00	78	504	3.09
St. Louis, Mo.	173	2251	1.53	67	344	3.89
Chicago, Ill.	173	2220	1.55	83½	634	2.63
Cincinnati, O.	173	2613	1.32	120	705	3.40
Pittsburgh, Pa.	173	2705	1.28	144	956	3.01
New York, N. Y.	173	3218	1.07	173	1119	3.09

Tariff Authority for rates from Springdale, Ark:
Johanson's 74-H. I. C. C. No. 1916.
Minimum Carload Weight 20,000 Pounds.
X Average distance from California based on 742 miles to Ogden.
(1) Applies on deciduous fruit, except apples.
(3) Applies on grapes.

[fol. 679] Routing

	From			
	D. & R. G. W. Points	Idaho	Hood River, Yakima	California
Denver, Colo.	1	6	6	12
Kansas City, Mo.	2	6	6	12
Omaha, Nebr.	3	6	6	12
St. Louis, Mo.	2	11	11	13
Chicago, Ill.	3	7	7	14
Cleveland, Ohio	4	8	8	15
Pittsburgh, Pa.	5	9	9	16
New York, N. Y.	5	9	8	17

1.—D. & R. G. W.
2.—D. & R. G. W.—M. P.
3.—D. & R. G. W.—C. B. & Q.
4.—D. & R. G. W.—C. B. & Q.—N. Y. C.
5.—D. & R. G. W.—M. P.—Penn.
6.—U. P. System.
7.—U. P. System—C. & N. W.
8.—U. P. System—C. & N. W.—N. Y. C.
9.—U. P. System—C. & N. W.—Penn.
10.—U. P. System—C. M. & St. P.—Penn.
11.—U. P. System—Wabash.
12.—S. P. to Ogden—U. P.
13.—S. P. to Ogden—U. P.—Wabash.
14.—S. P. to Ogden—U. P.—C. & N. W.
15.—S. P. to Ogden—U. P.—N. Y. C.
16.—S. P. to Ogden—U. P.—C. & N. W.—B. & O.
17.—S. P. to Ogden—U. P.—C. & N. W.—Erie.

[fol. 680] Tariff Authorities for Rates

From	To	Tariff Authority		
		Road or agent		I.C.C.No.
North East, Pa.	New York, N. Y.	NYC & StL	92-P	4610
Portland, N. Y.	Other Pts. shown	Jones	219-A	1534
Palisade, Colo.	Denver, Colo.	D & RGW	5922-B	107
Grand Jct., Colo.	Other Pts. shown	D & RGW	4925-G	117
Provo, Utah	Denver, Colo.	F. Wild's	4-C	18
	Chicago, Ill.	Boyd's	120-C	A-1468
	St. Louis, Mo.	Boyd's	120-C	A-1468
	Other Pts. shown	D & RGW	4925-C	117
Fort Valley, Ga.	Points shown	C. of Ga. Ry.	4	2486
Emmett, Idaho	Points shown	U.P.R.R.		3671
Hood River, Ore. Yakima, Wash.	Points shown	Toll's		1171
Texas	Denver, Colo.	Leland's	6-F	1780
	Other points	Leland's	13-Z	1766
Benton Harbor, Mich.	Kansas City, Mo. Omaha Nebr.	Boyd's	1-Q	A-1652
	St. Louis, Mo.	MPRR	9271-K	5653
	New York, N. Y.	Jones	218-D	1814
	Other points	Jones	224-A	1851
Arkansas	Points shown	Leland's	74-G	1802
Texas	Denver, Colo.	Leland's	6-F	1780
	Other points	Leland's	13-Z	1766
Lawton, Mich. Paw Paw, Mich.	New York, N. Y. Other points	Jones' Jones'	218-D 224-A	1814 1851
California	Points shown	Toll's	3-U	1174

[fol. 681] In connection with this exhibit, it should be borne in mind that the California rate to Group J is $1.62 per hundred pounds and $1.73 rate is applied as a blanket east thereof, to and including the Atlantic Seaboard. The rates from shipping points in other states are not so blanketed.

The rates from Provo, Utah, and Palisade, Colorado, to Cleveland, Ohio, and points east thereof are the same as the California rate, although the haul from Provo, Utah, is 485 miles and from Palisade, 748 miles less than from California.

The rates from Yakima, Washington, to St. Louis, and points east thereof are higher than from California for practically the same distances.

Out of 106 rates upon deciduous fruits from various points to destinations, the earnings per ton mile are higher than the earnings per ton mile from California to eastern destinations, with the exception of five rates.

I compiled the whole of this exhibit myself, and based the same upon personal inquiry among various other carriers of the country, and on personal investigation.

There is movement of deciduous fruit under all of the rates referred to in Defendants' Exhibit No. 175. The total movement on the Oregon-Washington Railroad and Navigation Company, from Washington, of pears, to various eastern points in 1926 was 1,461 cars. In 1926, the carload movement from Central of Georgia Railway points, was 10,028 cars of deciduous fruit. On all of the 106 rates which I have referred to there was a movement during the year 1926 of deciduous fruit.

[fol. 682] Cross-examination:

There was a heavier loading of deciduous fruit per car in 1917 than in other years covered by Defendants' Exhibit No. 174. This was due to war conditions and congestion.

The heavy average loading in 1922 was due to the refrigerator car shortage.

Referring to Exhibit No. 175, it is true that figures of movement and of average loading per car and the seasonal persistence of traffic are pertinent conditions on all rates. This is also true of minimum weight and average loading.

The deciduous fruit season in California is longer than in Georgia. The fruit movement from California is far greater in volume and extends through a greater period of time than any other fruit movement in the United States.

It is true that with increasing mileage there should be a descending rate per ton mile in earnings.

The seasonal movement under many of the rates referred to in Exhibit No. 175 is not comparable in volume to the movement from California to the east. The comparative volume of the movement is a factor in fixing the rate.

[fol. 683] Thereupon T. J. KEENAN was called as a witness on behalf of the Defendants and, having been duly sworn, testified as follows:

I am Auditor of Freight Accounts, Los Angeles & Salt Lake Railroad Co., and have held that position for three and a half years. For 20 years I have held positions ranging from clerk to chief clerk, accounting department.

There has been very little fluctuation in the average loading of decid-ous fruit between 1918 and 1926 inclusive. In 1922, however, there was a high average loading due to a car shortage. There has been no substantial increase in grape loading since 1918 on the Los Angeles & Salt Lake Railroad. The document now shown to me and marked as Defendants' Exhibit No. 178 shows the average load per carload in tons of deciduous fruits originating on the Los Angeles & Salt Lake Railroad and their lines connecting in California between 1918 and 1926 inclusive.

Thereupon there was offered and admitted in evidence Defendants' Exhibit No. 178, which is in the following form:

(Here follows Defendants' Exhibit No. 178, marked side folio page 684)

[fol. 685] Thereupon LOUIS E. WETTLING was called as a witness on behalf of the Defendants and, after having been duly sworn, testified as follows:

I am Manager of the Statistical Bureau of the Western lines. For the past 12 years I have made compilations and studies with regard to railroad earnings and various other statistics and data for presentation in rate cases, generally.

I have prepared a statement showing the total of all expenses and the proportion assigned to freight train operations for the year 1925 for 8 western railroads enumerated at the bottom of page one of this exhibit, and for 4 eastern systems, also therein enumerated. These systems are taken as typical of, and carrying a very large proportion of the freight tonnage from California to the east. That represents 61,047 miles of railroad for the western roads and 24,662 miles of eastern railroads.

The division between freight and passenger expense is made thereon under the rules of the Interstate Commerce

[fol. 684]

EXHIBIT No. 178

Witness: Keenan

I. C. C. Docket 19130

Union Pacific System

Statement Showing the Number of Cars and Tons, Also Average Load Per Carload, in Tons, of Deciduous Fruits, Segregated by Kinds, Originating on the L. A. & S. L. R. R. and Short Line Connections in California, Destined to Points Taking Groups A to M Inclusive Rates in Trans-Continental Eastbound Tariff 3-U for Years 1918 and 1920 to 1926 Inclusive

For the Calendar Years

Commodity	1918			1920			1921			1922		
	Carloads	Tons	Ave. load in tons	Carloads	Tons	Ave. load in tons	Carloads	Tons	Ave. load in tons	Carloads	Tons	Ave. load in tons
Apples	3	65	21.67	5	90	18.00						
Grapes	651	10,156	15.60	309	4,845	15.68	256	3,895	15.21	664	11,282	16.99
Peaches	2	32	16.00				11	146	13.27			
Pears	5	78	15.60							6	80	13.33
Plums	2	26	13.00	2	26	13.00	8	110	13.75	12	171	14.25
Quinces										1	15	15.00
Mixed Fruits										1	15	15.00
Total of All Deciduous Fruits	663	10,357	15.62	316	4,961	15.70	275	4,151	15.09	684	11,563	16.90

For the Calendar Years

Commodity	1923			1924			1925			1926		
	Carloads	Tons	Ave. load in tons	Carloads	Tons	Ave. load in tons	Carloads	Tons	Ave. load in tons	Carloads	Tons	Ave. load in tons
Apples	2	35	17.50									
Grapes	594	9,346	15.73	743	11,332	15.25	771	1,160	15.15	672	10,500	15.63
Peaches	6	80	13.33				1	13	13.00			
Pears	2	27	13.50									
Plums	5	66	13.20	7	106	15.14	9	118	13.11	9	118	13.11
Quinces												
Mixed Fruits												
Total of All Deciduous Fruits	609	9,554	15.69	750	11,438	15.25	781	11.811	15.12	681	10,618	15.59

Compiled by Auditor, Los Angeles & Salt Lake Railroad Co., Los Angeles, Calif., March 23, 1927.
Requested by, R. B. Robertson, Assistant Traffic Manager.

Commission. Upon this exhibit there is deducted from gross expense an expense entitled "unrelated items," the same being those which have no direct relation to train operations. The purpose of this deduction is to reduce the costs to train operating costs only. This shows a freight proportion of all expenses for the 8 western railroads of $665,434,959.15, and for the eastern systems $845,764,175.15.

On page two of this exhibit is a showing of car miles, loaded and empty, revenue and non-revenue and also caboose and working equipment expense, together with a gross total, the net total expense, the net ton miles, the [fol. 686] tare ton miles, and finally, the total gross ton miles of all freight traffic.

This results in a showing of a total non-revenue gross ton mile of something in excess of twenty-two billions, this service being performed in behalf of both freight and passenger. This is then apportioned to freight and passenger expenses under the rules of the Interstate Commerce Commission.

As a result, a cost per gross ton mile of 3.325965 mills is shown for the western roads and 3.762793 mills per gross ton mile for the eastern systems.

On page three of the exhibit, these calculations are applied to deciduous fruit, except apples, and shows a total gross tons per car of 57.72.

To these figures are then added the respective proportions of the non-revenue gross tons, showing a final gross ton per car on the average on western roads for deciduous fruit of 62.87, and on the eastern roads 61.46. Thereafter, these figures are applied to short line mileages, and finally, on page four of the exhibit, are applied to the carriage of deciduous fruits from certain points therein named to Chicago and from Chicago to five points in the eastern district.

This exhibit is not presented to indicate the actual cost to the carriers of handling deciduous fruit traffic, but is a comparison based upon the results as a whole, and assuming that the same cost per gross ton mile applies to one traffic as well as another; the average being fairly close, it seems reasonable to apply this cost to this freight.

[fol. 687] Thereupon, there was offered and admitted in evidence, Defendants' Exhibit No. 179, which is in the following form:

[fol. 688] DEFENDANTS' EXHIBIT No. 179

I. C. C. Docket No. 19130

Total All Expenses and Proportion Assigned to Freight-train Operations, 1925

8 Systems—Western District

Operating expenses, taxes, uncollectible railway revenues, equipment, and joint facility rents	$945,763,709.85
Less not related items, not identified with train operations	24,239,666.18
Less passenger proportion all expenses	256,089,084.52
Freight proportion all expenses	$665,434,959.15

4 Systems—Eastern District

Operating expenses, taxes, uncollectible railway revenues, equipment, and joint facility rents	$1,156,248,195.62
Less not related items, not identified with train operations	20,359,649.18
Less passenger proportion all expenses	290,124,371.29
Freight proportion all expenses	$845,764,175.15

Western roads	Mileage operated	Eastern roads	Mileage operated
A. T. & S. F. Sys	12,077.20	Baltimore & Ohio	5,294.04
C. & N. W. Ry	8,469.32	Erie System	2,451.07
C. M. & St. P. Ry	11,205.59	N. Y. C. R. R.	6,401.53
D. & R. G. W. R.R.	2,574.82	Pennsylvania	10,515.34
Missouri Pacific	7,337.72		24,661.98
So. Pac.-Pac. Lines	8,763.78		
Union Pac. Sys	9,575.78		
Western Pacific	1,042.68		
	61,046.89		

NOTE.—Data and freight-passenger separation from special reports of carriers.

Statistical Bureau—Western Lines, Chicago.

[fol. 689] EXHIBIT No. 179

Page 2

I. C. C. Docket No. 19130

Ascertainment of Gross Ton-mile Costs, 1925

8 Systems—Western District

Car miles	Total	Non-revenue	Revenue
Loaded	3,453,970,297	253,638,928	3,200,331,369
Empty	1,828,117,608	190,229,196	1,637,888,412
Total	5,282,087,905	443,868,124	4,838,219,781
	100.00	8.40	91.60
Caboose	116,319,131	116,319,131	.....
Work equipment	14,036,875	14,036,875	.....
Total	5,412,443,911	574,224,130	4,838,219,781
Net ton miles	80,212,458,309	10,145,557,139	70,066,901,170
Tare ton miles, loaded and empty	117,876,879,574	9,901,657,884	107,975,221,690
		8.40	91.60
Ton-miles, caboose (15 T)	1,744,786,965	1,744,786,965	.....
Ton-miles, work (17 T)	238,626,875	238,626,875	.....
Total gross ton miles	200,072,751,723	22,030,628,863	178,042,122,860
Freight proportion	72.21	15,908,317,102	.....
		8.93	100.00

$665,434,959.15 / 3.325965 mills per gross ton mile.
200,072,751,723

4 Systems—Eastern District

Car miles:			
Loaded	3,549,087,819	208,513,750	3,340,574,069
Empty	2,009,368,444	156,385,313	1,852,983,131
Total	5,558,456,263	364,899,063	5,193,557,200
	100.00	6.56	93.44
Caboose	116,202,067	116,202,067	.....
Work equipment	6,344,971	6,344,971	.....
Total	5,681,003,301	487,446,101	5,193,557,200
Net ton miles	103,539,653,766	8,340,550,016	95,199,103,750
Tare ton miles, loaded and empty	119,379,773,493	7,831,313,141	111,548,460,352
		6.56	93.44
Ton miles, caboose (15 T)	1,743,031,005	1,743,031,005	.....
Ton miles, work (17 T)	107,864,507	107,864,507	.....
Total gross ton miles	224,770,322,771	18,022,758,669	206,747,564,102
Freight proportion	74.46	13,419,746,105	
		6.49	100.00

$845,764,175.153.762793 mills per gross ton mile.
224,770,322,771

Statistical Bureau—Western Lines, Chicago.

[fol 690]

EXHIBIT No. 179

Page 3

I. C. C. Docket No. 19130

Gross Tons per car, 1925

	Western roads, deciduous fruits except apples		Eastern roads, deciduous fruits except apples
Revenue tons per car	14.15		14.15
Tare tons per car	26.00		26.00
Per cent empty haul (67.58)	17.57		17.57
	57.72		57.72
Fri. proportion non-rev. gross tons 8.93	5.15	8.49	3.74
Total gross tons per car	62.87		61.46

Short-line Mileage

Lodi, Cal. to Chicago (Sou. Pac.-U. P.-C. & N. W.)	2,207	Miles
Reedley, Cal. to Chicago (A. T. & S. F.)	2,361	"
Wineville, Cal. to Chicago (L. A. & S. L.-U. P.-C. & N. W.)	2,253	"
Chicago to Pittsburgh (Penna.)	468	Miles
" " Philadelphia (Penna.)	817	"
" " Baltimore (Penna.)	795	"
" " New York (Erie) not short line mileage	998	"
" " Boston (N. Y. C.-B. & A.)	1,037	"

Western roads	Gross ton-miles
Lodi, Cal. to Chicago, 2,207 miles at 62.87 tons	138,754
Reedley, Cal. to Chicago, 2361 miles at 62.87 tons	148,436
Wineville, Cal. to Chicago, 2253 miles at 62.87 tons	141,646

	Eastern roads	Gross ton-miles
Chicago to	Pittsburgh, 468 miles at 61.46 tons	28,763
	Philadelphia, 817 miles at 61.46 tons	50,213
	Baltimore, 795 miles at 61.46 tons	48,861
	New York, 998 miles at 61.46 tons	61,337
	Boston, 1,037 miles at 61.46 tons	63,734

Average light weight per car, 52,000 lbs., or 26. tons.
Average load deciduous fruits except apples, 28,300 lbs. or 14.15 tons.
Statistical Bureau—Western Lines, Chicago.

fol. 691] EXHIBIT No. 179

Page 4

I. C. C. Docket No. 19130

Total Cost per Car and Cwt. on Deciduous Fruits, 1925

		Gross ton-miles	Cost per gross ton-mile mills	Total cost per car	Cost per cwt.
Lodi, Cal., to Chicago		138,754	3.325965	$461.49	$1.63
Chicago to	Pittsburgh	28,763	3.762793	108.22	.38
	Philadelphia	50,213	"	188.94	.67
	Baltimore	48,861	"	183.85	.65
	New York	61,337	"	230.79	.82
	Boston	63,734	"	239.82	.85
	Cost of Entire Haul				
Lodi to	Pittsburgh	.....	.....	$589.71	$2.01
	Philadelphia	.....	.....	650.43	2.30
	Baltimore	.....	.....	645.34	2.28
	New York	.....	.....	692.28	2.45
	Boston	.....	.....	701.31	2.48
Reedley, Cal., to Chicago		148,436	3.325965	$493.69	$1.74
Chicago to	Pittsburgh	28,763	3.762793	108.22	.38
	Philadelphia	50,213	"	188.94	.67
	Baltimore	48,861	"	183.85	.65
	New York	61,337	"	230.79	.82
	Boston	63,734	"	239.82	.85
	Cost of Entire Haul				
Reedley, Cal., to	Pittsburgh	.....	.....	$601.91	$2.13
	Philadelphia	.....	.....	682.63	2.41
	Baltimore	.....	.....	677.54	2.39
	New York	.....	.....	724.48	2.56
	Boston	.....	.....	733.51	2.59
Wineville, Cal., to Chicago		141,646	3.325965	$471.11	$1.66
Chicago to	Pittsburgh	28,763	3.762793	108.22	.38
	Philadelphia	50,213	"	188.94	.67
	Baltimore	48,861	"	183.85	.65
	New York	61,337	"	230.79	.82
	Boston	63,734	"	239.82	.85
	Cost of Entire Haul				
Wineville, Cal., to	Pittsburgh	.....	.....	$579.33	$2.04
	Philadelphia	.....	.....	660.05	2.33
	Baltimore	.....	.....	654.98	2.31
	New York	.....	.....	701.90	2.48
	Boston	.....	.....	710.93	2.51

Statistical Bureau—Western Lines, Chicago.

[fol. 692] Cross-examination:

The average haul of freight on all of the railroads of the United States as a whole upon the latest available figures is about 325 miles. In 1924 the average haul for the western lines was 237 miles in round figures for all traffic, carload traffic alone. It is 235.28 miles on the total average.

The operating costs which I have used in the compilation of Exhibit No. 179 includes the cost of handling long haul traffic and short haul traffic, the cost of branch line traffic and main line traffic, the cost of interstate and intrastate traffic, and carload and less than carload traffic.

Redirect examination:

To deduct from the total costs that portion of the less than carload terminal cost in which the carload traffic does not participate would reduce the average about 5.75 per cent, that is to say, the average cost per car mile or per hundred pounds.

Thereupon J. E. Williams was called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

I am Vice-Chairman of the Central Freight Association. The Central Freight Association is an association of the carriers running east from the Missouri River and Lake Michigan to and including Buffalo and Pittsburgh and north [fol. 693] of the Ohio River, including the Grand Trunk Railway. I have had a number of years of railroad traffic work experience prior to holding my present position which I have held for four or five years. The Central Freight Association handles practically all of the rate matters that are submitted to it by any of its members. I am Chairman of the Central Freight Association Committee, which has principally to do with the transcontinental rates. The principal lines in the Central Freight Association, which originates, and which also handles deciduous fruit traffic, are members of this Committee.

I have prepared an exhibit showing rates, distances and routes on grapes, apples and peaches from points in Michigan to various consuming points. In this exhibit I have used nine of the principal shipping points in Michigan on the Pere Marquette Railway and thirty to forty destination points.

Thereupon said exhibit was offered and introduced in evidence and marked Defendants' Exhibit No. 183 and is in the following form:

(Here follows Defendants' Exhibit No. 183, marked side folio pages 694 and 695.)

[fol. 696] Cross-examination:

As a rule the movement of fruit from Ludington, Michigan, is an all-rail movement. The bulk of the Michigan fruit traffic is originated on the Pere Marquette Railway. It is handled both in trainload lots and in mixed trains, although at the height of the movement the trains are lighter as a rule.

[fol. 697] V. M. Parshall was thereupon called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

I am Director of the Traffic Bureau of the New York State Department of Agriculture and Markets. I have been with the State of New York about a year. Prior to that time I had approximately thirteen years of traffic experience. I appear here at the request of the Department of Agriculture of the States of Pennsylvania and Michigan. The New York State Department of Agriculture and Markets and the Pennsylvania department, are governmental departments of the State of New York and the Commonwealth of Pennsylvania, respectively. The Michigan department is a department of the State of Michigan. It is the view of the Department of Agriculture of the State of New York that the interests of the producers of deciduous fruit in our state would be adversely affected by a reduction in the rates on deciduous fruits from California. We have for a long time viewed the transcontinental rates as

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[fol. 694]

EXHIBIT No. 183

Witness: J. E. Williams

I. C. C. Docket 19130

Statement Showing Rates, Distances and Routes on Grapes, Apples and Peaches From Michigan Origin Points to Various Consuming Points

From	Bangor, Mich.				Coloma, Mich.				Fenneville, Mich.				Hartford, Mich.			
		Rates on				Rates on				Rates on				Rates on		
To	Miles	Grapes	Peaches	Apples	Miles	Grapes	Peaches	Apples	Miles	Grapes	Peaches	Apples	Miles	Grapes	Peaches	Apples
Albuquerque, N. M.	1,470	210½	280	136	1,455	207½	277	135	1,481	283	213½	137½	1,462	209½	279	135½
Baltimore, Md.	821	114	114	50	805	116½	116½	51	850	114	114	50	813	114	114	50
Boston, Mass.	944	123	123	56	956	125½	125½	57	896	123	123	56	948	123	123	56
Charleston, W. Va.	526	84½	84½	35	509	84½	84½	35	546	87	87	36	517	84½	84½	35
Charlotte, N. C.	945	188½	202½	91	929	188½	202½	91	965	191	205	92	937	188½	202½	91
Chattanooga, Tenn.	653	150½	162	68½	637	150½	162	68½	673	153	164½	69½	645	150½	162	68½
Cheyenne, Wyo.	1,118	192½	219½	123½	1,103	189½	216½	122½	1,129	195½	222½	125	1,110	191½	218½	123
Chicago, Ill.	123	52½	52½	21½	108	51½	51½	21	134	57½	57½	23	115	51½	51½	21
Cincinnati, Ohio	291	70	70	29	271	70	70	29	308	72½	72½	30	279	70	70	29
Cleveland, Ohio	290	69	69	28½	299	70	70	29	296	7'½	71½	29½	302	69	69	28½
Columbus, Ohio	306	72½	72½	30	298	70	70	29	312	74	74	30½	306	70	70	29
Dallas, Tex.	1,065	194½	112½	112½	1,049	192½	112½	112½	1,085	198½	112½	112½	1,057	194½	112½	112½
Denver, Colo.	1,141	192½	219½	123½	1,126	189½	216½	122½	1,165	195½	222½	125	1,133	191½	218½	123
Detroit, Mich.	213	62	62	25½	229	65	65	27	193	62	62	25½	221	62	62	25½
Fargo, N. D.	708	168½	168½	80½	725	170	170	81	690	173½	173½	82½	718	170	170	81
Ft. Scott, Kan.	672	128½	137	71	657	127½	134	70	683	136½	142	72½	694	127½	136	70½
Houston, Tex.	1,193	194½	112½	112½	1,177	192½	112½	112½	1,213	198½	112½	112½	1,057	194½	112½	112½
Indianapolis, Ind.	198	65½	65½	27	177	64	64	26½	214	67½	67½	28	186	64	64	26½
Kansas City, Mo.	574	136½	136½	63½	559	133½	133½	62½	585	139½	139½	63½	566	135½	135½	63
LaCrosse, Wis.	340	111	111	43	355	106½	106½	43	320	114	114	43	348	106½	106½	43
Louisville, Ky.	308	75½	75½	32	287	74	74	31½	324	77	77	32½	296	74	74	31½
Memphis, Tenn.	577	123½	96	47½	562	123½	95	47½	588	123½	100	47½	569	123½	96	47½
Miami, Fla.	1,502	287½	305½	152	1,486	287½	305½	152	1,522	290	308	153	1,494	287½	305½	152
Milwaukee, Wis.	142	57½	57½	23½	158	59½	59½	24	122	57½	57½	23½	150	59½	59½	24
Montreal, Que.	783	117	117	53½	799	119½	119½	54	763	119½	119½	54	791	119½	119½	54
Nashville, Tenn.	529	134½	143	56	513½	134½	143	56	540	137	145½	57	521	134½	143	56
Newark, N. J.	830	117	117	53	814	119½	119½	54	823	117	117	53	822	117	117	53
New Bedford, Mass.	977	123	123	56	993	125½	125½	57	957	123	123	56	1,004	123	123	56
New York, N. Y.	860	117	117	53	875	119½	119½	54	839	117	117	53	868	117	117	53
Orlando, Fla.	1,283	259½	232½	122½	1,267	259½	232½	122½	1,303	262	235	123½	1,275	259½	232½	122½
Philadelphia, Pa.	841	115	115	51	825	117½	117½	52	836	115	115	51	833	115	115	51
Pittsburgh, Pa.	467	82	82	34	447	82	82	34	495	82	82	34	455	82	82	34
Providence, R. I.	944	123	123	56	960	125½	125½	57	924	123	123	56	952	123	123	56
Richmond, Va.	895	114	114	50	879	116½	116½	51	915	114	114	50	887	114	114	50
St. Paul, Minn.	468	119½	119½	48	483	119½	119½	48	448	119½	119½	48	476	119½	119½	48
Salt Lake City, Utah	1,638	270½	329½	203½	1,623	267½	326½	202½	1,649	223½	332½	205	1,630	269½	328½	203
Shawnee, Okla.	893	173½	153	100½	877	172	153	100½	913	178	153	100½	885	172	153	100½
Washington, D. C.	794	114	114	50	778	116½	116½	51	787	114	114	50	786	114	114	50
Wilkesbarre, Pa.	730	115	115	51	745	117½	117½	52	709	115	115	51	738	115	115	51
Winona, Minn.	364	115	115	44½	370	110	110	44½	344	117½	117½	44½	378	110	110	44½

[fol. 695]

EXHIBIT No. 183—Continued

Witness: J. E. Williams

I. C. C. Docket 19130

Statement Showing Rates, Distances and Routes on Grapes, Apples and Peaches From Michigan Origin Points to Various Consuming Points

From	Ludington, Mich.				Paw Paw, Mich.				Shelby, Mich.				Stevensville, Mich.				St. Joseph, Mich.			
		Rates on				Rates on				Rates on				Rates on				Rates on		
To	Miles	Grapes	Peaches	Apples	Miles	Grapes	Peaches	Apples	Miles	Grapes	Peaches	Apples	Miles	Grapes	Peaches	Apples	Miles	Grapes	Peaches	Apples
Albuquerque, N. M.	1,501	231½	301	145	1,478	209½	279	135½	1,569	229½	299	144	1,436	205	274½	134	1,443	205½	275	134
Baltimore, Md.	812	121½	121½	53½	829	114	114	50	809	121½	121½	53½	787	116½	116½	51	814	116½	116½	51
Boston, Mass.	946	130½	130½	59½	914	123	123	56	906	130½	130½	59½	974	125½	125½	57	927	125½	125½	57
Charleston, W. Va.	627	96	96	39½	541	84½	84½	35	593	96	96	39½	453	83½	83½	34½	460	83½	83½	34½
Charlotte, N. C.	1,107	202	216	96½	952	188½	202½	91	1,044	202	216	96½	911	188½	202½	91	911	188½	202½	91
Chattanooga, Tenn.	815	164	175½	74	660	150½	162	68½	752	164	175½	74	619	150½	162	68½	619	150½	162	68½
Cheyenne, Wyo.	1,108	213½	240½	132½	1,126	191½	218½	123	1,217	211½	238½	131½	1,084	187	214	121½	1,091	187½	214½	121½
Chicago, Ill.	285	73½	73½	30½	131	51½	51½	21	222	71½	71½	29½	89	47½	47½	19½	96	47½	47½	19½
Cincinnati, Ohio	450	83½	83½	34½	303	70	70	29	368	83½	83½	34½	271	70	70	29	264	70	70	29
Cleveland, Ohio	379	82½	82½	34	323	69	69	28½	348	82½	82½	34½	299	71½	71½	29½	292	70	70	29
Columbus, Ohio	423	83½	83½	34½	330	70	70	29	388	83½	83½	34½	298	71½	71½	29½	291	70	70	29
Dallas, Tex.	1,136	217	130	122	1,077	194½	112½	112½	1,164	210½	123½	120	1,031	190	112½	112½	1,038	190	112½	112½
Denver, Colo.	1,144	213½	240½	132½	1,161	191½	218½	123½	1,252	211½	238½	125	1,107	187	214	121½	1,126	187½	214½	121½
Detroit, Mich.	244	71	71	29	237	62	62	25½	239	69½	69½	28½	247	67½	67½	28	240	65	65	27
Fargo, N. D.	611	167	167	80	733	170	170	81	695	173½	173½	82½	727	171½	171½	81½	734	170	170	81
Ft. Scott, Kan.	709	149½	158	80	680	127½	136	70½	771	147½	136½	79	638	123½	132	69	645	123½	132	69
Houston, Tex.	1,282	217	130	122	1,205	194½	112½	112½	1,292	210½	120	123½	1,159	190	112½	112½	1,166	190	112½	112½
Indianapolis, Ind.	380	80½	80½	33	201	64	64	26½	316	79	79	32½	174	63½	63½	26	167	63½	63½	26
Kansas City, Mo.	512	157½	157½	72½	582	121½	135½	63	673	155½	155½	68	540	131	131	61½	547	118½	131½	61½
LaCrosse, Wis.	297	94	94	34½	363	108½	108½	43	325	114	114	43	374	107	107	43	367	107	107	43
Louisville, Ky.	490	92	92	39	311	74	74	31½	426	88½	88½	37½	284	74	74	31½	277	74	74	31½
Memphis, Tenn.	745	135½	153½	52	585	123½	96	47½	676	135½	115½	52	544	123½	88	47½	604	123½	139½	47½
Miami, Fla.	1,664	301	319	157½	1,509	287½	305½	152	1,601	301	319	157½	1,468	287½	305½	152	1,468	287½	305½	152
Milwaukee, Wis.	100	51	51	21	166	59	59	24	128	57½	57½	23	174	55½	55½	22½	170	55½	55½	22½
Montreal, Que.	732	124½	124½	56½	807	117½	117½	53½	809	124½	124½	56½	817	119½	119½	54	810	119½	119½	54
Nashville, Tenn.	691	148	156½	61½	537	134½	143	53	628	148	156½	61½	494½	134½	143	56	501	134½	143	56
Newark, N. J.	855	124½	124½	56½	837	117	117	53	870	124½	124½	56½	796	119½	119½	54	803	119½	119½	54
New Bedford, Mass.	984	130½	130½	59½	1,001	123	123	56	1,004	130½	130½	59½	1,012	125½	125½	57	1,005	125½	125½	57
New York, N. Y.	866	124½	124½	56½	883	117	117	53	886	124½	124½	56½	894	119½	119½	54	887	119½	119½	54
Orlando, Fla.	1,445	273	246	128	1,290	259½	232½	122½	1,382	273	246	128	1,249	259½	232½	122½	1,149	259½	233½	122½
Philadelphia, Pa.	886	122½	122½	54½	854	115	115	51	851	122½	122½	54½	807	117½	117½	52	814	117½	117½	52
Pittsburgh, Pa.	537	91½	91½	37½	471	82	82	34	534	91½	91½	37½	447	82	82	34	440	82	82	34
Providence, R. I.	951	130½	130½	59½	968	123	123	56	971	130½	130½	59½	979	125½	125½	57	972	125½	125½	57
Richmond, Va.	948	121½	121½	53½	902	114	114	50	945	121½	121½	53½	861	116½	116½	51	868	116½	116½	51
St. Paul, Minn.	369	104½	104½	39½	492	119½	119½	48	454	119½	119½	48	485	119½	119½	48	492	119½	119½	48
Salt Lake City, Utah	1,628	291½	250½	212½	1,646	269½	328½	203	1,737	289½	348½	211½	1,684	265	324	201½	1,611	265½	324½	201½
Shawnee, Okla.	1,007	197	170	110	905	172	153	100½	992	197½	164	108	859	169	153	100½	866	169	153	100½
Washington, D. C.	839	121½	121½	53½	801	114	114	50	834	112½	121½	53½	760	116½	116½	51	767	116½	116½	51
Wilkesbarre, Pa.	748	122½	122½	54½	753	115	115	51	760	122½	122½	54½	759	117½	117½	52	761	117½	117½	52
Winona, Minn.	322	97	97	35½	388	111½	111½	44½	350	117½	117½	44½	352	110½	110½	44½	359	110½	110½	44½

preferential to California and prejudicial to our shippers.

We are apprehensive that if the reduction asked for in this proceeding is granted by the Commission that similar reductions will follow as a natural consequence for commodities that are not here involved. For example, the apple rate of $1.50 from the south to the Pacific Coast would be open to attack if a rate of $1.44 is established on deciduous fruit other than apples; and similar treatment might follow as to vegetables and other commodities which are now actively in competition with the products of New York and Pennsylvania in our markets.

[fol. 698] The principal grape producing area in the eastern market is the Chautauqua and Erie Belt, which is located partly in New York State and partly in Pennsylvania. In addition, grapes are produced in New York State, in the central or Finger Lakes region, around Seneca and Keuka Lakes, and in the Lower Hudson Valley. The Michigan grape belt is in the southwest corner of the state. The Chautauqua and Erie belt, so-called, contains about 40,000 acres devoted to the growth of grapes.

In 1926 the total production of grapes in the Chautauqua and Erie belt amounted to 8,188 ten-ton cars and for the twenty-seven years between 1899 and 1927, the production averaged 5,555 cars.

Between 1903 and 1912 there was a steady increase in the shipment of grapes from California into our territory, having increased from 1,804 cars in 1903 to 6,357 cars in 1912, an average annual shipment over this period of 3,775 cars.

I have been unable to obtain the shipments from California for the period from 1912 to 1917. The total shipments in 1925, of grapes from California, was 75,858 carloads; in 1926, 63,549 carloads. The shipments during the same period from the Chautauqua and Erie belt amounted to 4,352 carloads for 1925, and 8,357 carloads for 1926.

In 1924, shipments from Michigan to eastern points, of grapes, amounted to 4,680 cars; in 1925, 398 cars, and in 1926, 3,012 cars.

The document now shown to me, marked for identification as Intervenors' Exhibit No. 185, shows the comparative shipments of grapes from important states of the United States for six years from 1921 to 1926, inclusive.

[fol. 699] Thereupon there was offered and admitted in evidence Intervenors' Exhibit No. 185, which is in the following form:

[fol. 700]

INTERVENOR'S EXHIBIT No. 185

Witness: Paisbell

Comparative Shipments of Grapes from Important States for Six Years, 1921 to 1926, Inclusive

	1921	1922	1923	1924	1925	1926*	Total	Average
California	33,344	43,952	55,348	57,695	75,858	63,549	329,746	54,958
Michigan	1,292	6,020	4,202	4,680	398	3,012	19,604	3,267
New York	2,535	7,720	4,312	5,641	3,763	7,002	30,973	5,162
Pennsylvania	390	1,558	847	1,166	589	1,355	5,905	984
Others	256	669	627	751	1,061	2,667	6,031	1,005
Total	37,817	59,919	65,336	69,933	81,669	77,585	392,259	65,376
California per cent of total	88%	73%	85%	83%	93%	82%	.....	84%

Source: 1921 to 1925, California Grape Deal, 1925 Season, U. S. Department of Agriculture.
*Feb. 1, 1927, report, subject to revision, U. S. Department of Agriculture.

[fol. 701] In the majority of the important markets, California, each year, and over the full year period, furnishes a larger proportion of the total unloads. For example, at Boston, during the 4-year period from 1923 to 1926, inclusive, there were unloaded 17,397 cars from California, and 1,506 cars from New York and Pennsylvania. At Chicago, for the same period, 21,106 cars originated in California and 738 from New York and Pennsylvania. As to Chicago, Michigan shipped 2,351 cars during the 4-year period. At New York City, 60,061 cars came from California and 3,419 from New York and Pennsylvania. The only markets for New York and Pennsylvania grapes are Philadelphia and Pittsburgh, where the products are conspicuous and even at these markets New York and Pennsylvania furnishes less than 20 per cent of the total.

In the smaller markets of Pennsylvania, the shipments from California, over a 4-year period of 1923 to 1926, inclusive, were more than 3½ times as great as the shipments from New York and Pennsylvania.

During the last few years shipments of grapes from California have substantially increased in excess of any other representative period; California grapes are the dominating factor in every important market and their distribution covers the entire United States. On the other hand, shipments from eastern states have fluctuated during this period, and, in spite of the increased consumption of grapes as a whole in important markets, the shipments from the eastern states to these markets as a whole have not shown any appreciable increase.

For several years embargoes have been in effect during the period in which New York and Pennsylvania grapes [fol. 702] begin to move. These embargoes are caused by the heavy movement of California grapes to the east and the congestion resulting from that and frequent diversions and reconsignments.

Many detentions, some of them averaging 10.8 days for 168 cars, happen during the latter part of September and the early part of October, when the New York movement of grapes commences. In practically every important terminal in the east there is utter congestion with shipments of California grapes during the total period when eastern

grapes are being produced. California has a number of important advantages over eastern producers in the raising of grapes. The major advantage is favorable climatic conditions, which are dependable in California. In the east the crop fluctuates. California vines yield more heavily than those in the east. The California yield per vine is slightly in excess of twice that of New York and Pennsylvania.

It is not our purpose in this connection that California should be deprived of the natural advantages which she has as to the production of grapes. It is, however, our position that the present rate not only does not deprive California of these natural advantages, but does deprive us of the natural advantage to which we are entitled, that is, proximity to our markets.

While grapes from California move on commodity rates over an extremely large territory, our grapes move almost entirely on second-class rates.

The average haul of the New York state grapes in 1923 was 354 miles and the average rate 68.5¢. In our traffic there are practically no reconsignments and our shipments [fol. 703] are confined to official classification territory.

California present rates represent an increase of 23¢ per hundred pounds over the rate in effect in 1897, as compared with an increase of 35.5¢ per hundred pounds over the same period from New York. The increase in percentage as to California is 17.3 per cent and as to New York 91.1 per cent.

The document now shown to me marked for identification as Intervenors' Exhibit No. 191, shows the relative price levels of Chautauqua and Erie grapes and California grapes between the years 1919 and 1926.

Thereupon there was offered and admitted in evidence Intervenors' Exhibit No. 191, which is in the following form:

[fol 704]

EXHIBIT No. 191

Table No. 6

Comparisons Between Chautauqua-Erie and California Crops

Year	Production of grapes to market as fresh fruit		Farm value per ton		Total farm value	
	C. & E. Belt, tons	California, tons	C. & E. Belt, tons	California	C. & E. Belt	California
1919	49,210	600,000	$93.93	$58.33	$4,622,411	$35,000,000
1920	53,500	565,000	128.12	73.51	6,854,740	41,535,000
1921	13,760	520,000	123.71	77.57	1,702,260	40,340,000
1922	78,570	758,000	69.89	59.21	5,490,900	44,880,000
1923	39,450	870,000	60.01	37.01	2,367,240	32,200,000
1924	52,000	855,000	59.95	45.20	3,117,240	38,650,000
1925	32,790	1,112,000	90.01	34.21	2,951,460	38,040,000
1926	81,880	1,000,000	31.07	32.16	2,544,322	32,155,000
Total, 8 years	401,160	6,280,000	.....	.....	$29,650,573	$302,800,000
Average	50,145	785,000	$73.91	$48.22	$3,706,322	$37,850,000

[fol. 705] This exhibit shows that whatever factors influence the price of California grapes, makes their results apparent in the price of eastern grapes.

A characteristic representative shipping point from the Cha-ta-qua Erie grape producing belt to Chicago is Brockton, New York, which is 491 miles from Chicago. The rate from Brockton to Chicago on grapes is 83¢ per hundred pounds. If the theory which has been characterized in this proceeding as the square root theory were applied to the rate on grapes for a haul of 2,909 miles, using as the basis this Brockton-Chicago rate, it would give us a rate of approximately $2.03.

Cross-examination:

Our fruit growers are not prejudiced by the marketing of California apricots in New York and other eastern cities, nor by the marketing of California plums. Our real peach competition is from Georgia. We are not, therefore, objecting to the rates proposed upon apricots, plums or peaches.

Our chief concern is with the rates upon grapes. The pear movement from California is largely out of the way before the New York pear movement starts in substantial volume.

The California grapes appear in the market at a very much earlier date than the New York grapes. The New York grapes commence to move on or about October 6th. For a period of nearly three months before that time Cali- [fol. 706] fornia grapes are being marketed in more or less quantities. We are not in competition with the early grapes from California.

It is not true that the Concord grape makes its own market, irrespective of the presence of California grapes.

In 1926, we had a large crop of comparatively poor value, and in 1925, a relatively small crop with a total failure of the Michigan crop, and a very high quality. The result is that we enjoyed relatively high prices in 1925, and this is true notwithstanding the fact that California marketed more grapes in the East than in any prior year. In the following year the California shipments decreased, and nevertheless our prices diminished from $90.00 a ton in 1925 to $30.00 a ton in 1926. Other things being equal,

the withdrawal or diminution of the California grape shipments would tend to improve our prices. In the year 1926, other things were not equal in that we had a very large crop in New York and Michigan, although of very poor quality, and our prices broke. I do not contend that my showing for the two years, 1925 and 1926, will substantiate the theory that the California grape is injuring the market for the New York grape.

Notwithstanding the increase in grape shipments between 1923 and 1925, the price obtained for our grapes also increased due to other reasons.

Considering simply the changes in rates which have taken effect since June 24, 1918, and confining ourselves to the period intervening between that time and the present, our position with reference to rates has been improved relatively to the California grape grower. This is also true if we consider the period of time intervening between February, 1915, and the present.

[fol. 707] WILSON ROOP was thereupon called as a witness on behalf of the Intervenors and, having been duly sworn, testified as follows:

I reside in the grape producing section of New York, known as the Chautauqua-Erie grape belt. I am a fruit raiser, grape raiser, and one of the sales managers of the Chautauqua-Erie Grape Growers Co-operative Association. This is a co-operative association; one of the oldest in existence, and handles fifty per cent of the entire production of the State of New York. In New York State we have about 1,200 grape growers. It is a marketing association for its members. It markets grapes for actual cost. We make a charge of approximately $3.00 a ton for our service. There is a profit-sharing arrangement in the association, and if there are any profits it is repaid to the members.

As a grape grower, and in my capacity as sales manager of the Chautauqua-Erie Grape Growers Co-operative Association, I know the economic conditions of the industry.

The economic condition of the grape growing industry in the western end of New York, and also of Pennsylvania and the central part of New York State, is in a very precarious

condition. Since 1924, we have received only enough to cover the actual operating expenses of our vineyards, excluding interest on our investment. In 1926 we suffered a severe loss. The total acreage planted to grapes in the Chautauqua-Erie belt is 40,000 acres. There has been no increase in this acreage in twenty years.

The Concord grape is a native grape originally found in the United States, and developed from a vine found in Concord, Massachusetts. It is known as the Slip-skin grape [fol. 708] and has a certain tastiness not found in any other grape grown in the United States or elsewhere. This grape is put to every use that grapes are used for. It is principally used in this country as a table grape. Since 1908, Concord grapes have been used as grape juice. This was the principal use of the Concord grape until the advent of the Eighteenth Amendment. Since that time the market for table grapes was practically destroyed because of the high prices paid for grapes for juice purposes. At the present time it is a table grape, a jelly or jam grape, and a juice grape.

About 65 to 70 per cent of our output competes with California grapes.

Approximately 15 per cent of the grapes grown in the Chautauqua-Erie belt are used by grape juice manufacturers. This is true of 8 or 9 per cent of the total grapes grown in New York State.

Up to the years 1918 and 1920 the producers of Concord grapes had been selling their products at a reasonable profit. From time to time the prices had taken sudden spurts and production increased; upon finding an overproduction it was cut down.

Prior to 1917 our Concord grapes sold for between $30 and $35 per ton, and California juice grapes $10 to $12 per ton f. o. b. California. The average production in tons per acre in our territory is 750 or 800 pounds more than a ton. The average expense of production per acre is $100.

California grapes arrive on the eastern markets in July and continue until practically the latter part of January. The peak of the grape movement to the east is in September [fol. 709] and October. In the Chautauqua-Erie District we come into the market during the latter part of September, or if the season is unfavorable, in the middle of October.

Since 1922 we have felt the serious effects of embargoes on shipments of grapes and this continued through 1923 and 1924, and particularly 1925. Practically all the markets for grapes at some time or other during our entire shipping season were embargoed on eastern grapes. We lost customers by reason of these embargoes. Many of our customers have been in the habit of receiving grapes from us and dealing with us directly for years. It is difficult to make any arrangements for shipment to them because of the embargoes. If an order does not arrive when it should, they become disgruntled.

We use refrigerator cars in the transportation of our grapes. In 1922 we had a serious car shortage and a slight car shortage in 1924, when it was difficult to obtain cars. The average loading has increased materially during the last five years. Last year our loading was 11½ or 12 tons average. We pay transportation charges on actual scale weight. There are very few damage claims on our grapes.

All fruits compete with each other. Every fruit competes with every other type of fruit in the sense that a person has the choice of purchasing different fruits on the market at the same time. All such fruits are in competition with one another.

During the year 1925 we received a better price for our Concord grapes because of the small crop, good quality and early arrival of the crop. It happened that during the [fol. 710] marketing season there was a tremendous demand for grapes. During that year our crop moved at an opportune time. When the market broke in that year practically all of our grapes had been sold. We were also favored by absence of competition from Michigan, less competition from Concord producers and a shortage in the California black juice grape crop.

We are in a very precarious economic condition and we feel that it is questionable whether the grape business can continue to be profitable either to California or to us; we do not wish to be in a less advantageous position than the California people. If we cannot grow grapes and compete with California with correspondingly relative freight rates we must get out of the business.

I do not think that the point of saturation will ever be reached in the table grape business, but it is probable that

during the next few years there will be no increase in the making of juice, or a very slight increase, and the conclusion will therefore remain stationary and the movement will be about the same or less.

Cross-examination:

In 1925 we were marketing our grapes during the high water mark of the flow of California grapes into our territory, during the excessive demand for grapes in that season.

[fol. 711] Thereupon M. S. CONNELLY was called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

I am Assistant Freight Traffic Manager of the Pennsylvania Railroad. I have been in the traffic freight department all of my life.

The Pennsylvania Railroad publishes a tariff numbered ICC F-1592 and supplement number 5, which became effective February 1, 1926, stating its rules governing the reconsignment of citrus and deciduous fruits at stations on the Pennsylvania Railroad covering traffic from the Pacific Coast. This tariff provides that shipments of deciduous fruits from the Pacific Coast may be reconsigned from any point on the Pennsylvania Railroad to any other point thereon at the through rate from point of origin to destination, when the station at which the reconsignment is made is directly enroute with the final destination station, and it further provides that shipments may be reconsigned at stations which are not strictly intermediate with final destination on the Pennsylvania Railroad, provided the reconsignment point is on a direct route via any other railroad between the point of shipment and final destination as well.

The rules for reconsignment of deciduous fruits are very liberal, for example, a shipment consigned to Cincinnati, Ohio, may be hauled from Chicago and at Cincinnati reconsigned to Columbus, Ohio, 120 miles distant, again to Cleveland, 169 miles distant from the last mentioned point, and again to Pittsburgh, an additional 138 miles. Assuming that it is finally disposed of at Pittsburgh, the car has been

hauled 723 miles enroute from Chicago to Pittsburgh, [fol. 712] whereas the direct haul from Chicago to Pittsburgh would have been 468 miles. Under the tariff mentioned, we would, nevertheless, collect the same rate of freight at Pittsburgh as if the shipment had moved direct.

At our Pittsburgh Produce Yards deciduous fruits are offered for sale and are purchased by buyers located at Pittsburgh and elsewhere within a radius of 75 to 150 miles. If a car of deciduous fruit is shipped from Pittsburgh through a buyer at a point west of Pittsburgh, we do not charge a further local rate for that haul, but by our tariff governing this service we charge special rates under which our earnings are reduced approximately 87 per cent below our local rate. In connection with general traffic, if a second movement is desired, it must be made on the basis of the tariff rate from the point of reforwarding.

Each carrier in the Central Freight Association territory files individual tariffs governing reconsignments and conversion of freight, but the general rules of all are the same, with the exception of the necessary provisions covering local conditions.

During the year 1925, we handled 43,161 cars of fruits and vegetables in our Pittsburgh Produce Yards, and in 1926, 45,296 cars.

We have avoided and corrected the confusion which existed in the Produce Yards by reason of reconsignments and the large volume of traffic by the adoption of a form provided by the Pennsylvania Railroad Company, which gives to all the interested parties complete information in connection with every shipment that is reconsigned in the yards. Some of the shippers furnish their own forms, but [fol. 713] in general, the form used is always identical with the form provided by the company.

I have examined the rates from various points in the Southern part of the United States to representative points in the Central Freight Association. The shortest haul covered by this examination was from Atlanta, Georgia, to Indianapolis, Indiana, a distance of 561 miles, and the longest a haul of 1,039 miles from Valdosta, Georgia, to Grand Rapids, Michigan. Taking all of the hauls between these two territories which were examined in excess of 900

miles, it is found that the average haul is 958 miles, and the average rate on peaches, $1.035 per hundred pounds, and on grapes, $1.12 per hundred pounds.

Cross-examination:

I do not know whether there is a large or small volume of grapes from Georgia points to representative destinations referred to by me in the Central Freight Association. It is true that the rate from Atlanta to Indianapolis is 82¢ and the distance 560 miles, and the rate from Valdosta, Georgia, to Grand Rapids, Michigan, is $1.10, and the distance 1,039 miles. To this extent the comparison of these two rates indicates that as the distance increases the unit earnings under the rate decline.

[fol. 714] L. H. KENTFIELD was thereupon called as a witness on behalf of the defendant and, having been duly sworn, testified as follows:

I am a member of the auxiliary committee of the Trunk Line Association. The Trunk Line Association is a voluntary association of railroads, comprising all of the lines operating east of the western terminal of the eastern Trunk Lines and includes the Norfolk & Western Railway, the Virginia Railway and the Chesapeake & Ohio Railway. Its territory extends to the international boundary line on the north. The function of the auxiliary committee is to investigate and analyze all proposed changes in rates and to recommend action thereon to other committees. I deal particularly with transcontinental rates. I am chairman of the Defense Traffic Committee of the Trunk Lines, defendants in this case, and represent the eastern Trunk Lines of the National Diversion and Reconsignment Committee. I have been in the railroad business since 1886 in various positions.

I have prepared a statement showing the rates on peaches in carloads from West Virginia and Maryland points from which there was an actual movement to destinations in the Central Freight Association territory, with the revenue per ton mile and per car mile, using actual shortline mileage

Statement Showing Rates on Peaches, Carloads, from West Virginia and Mrayland Points from Which There Was an Actual Movement to Some Principal Markets in Central Freight Association Territory with Revenue per Ton per Mile and per Car-mile, Using Actual Short-line Mileage and Average Mileage to Destination

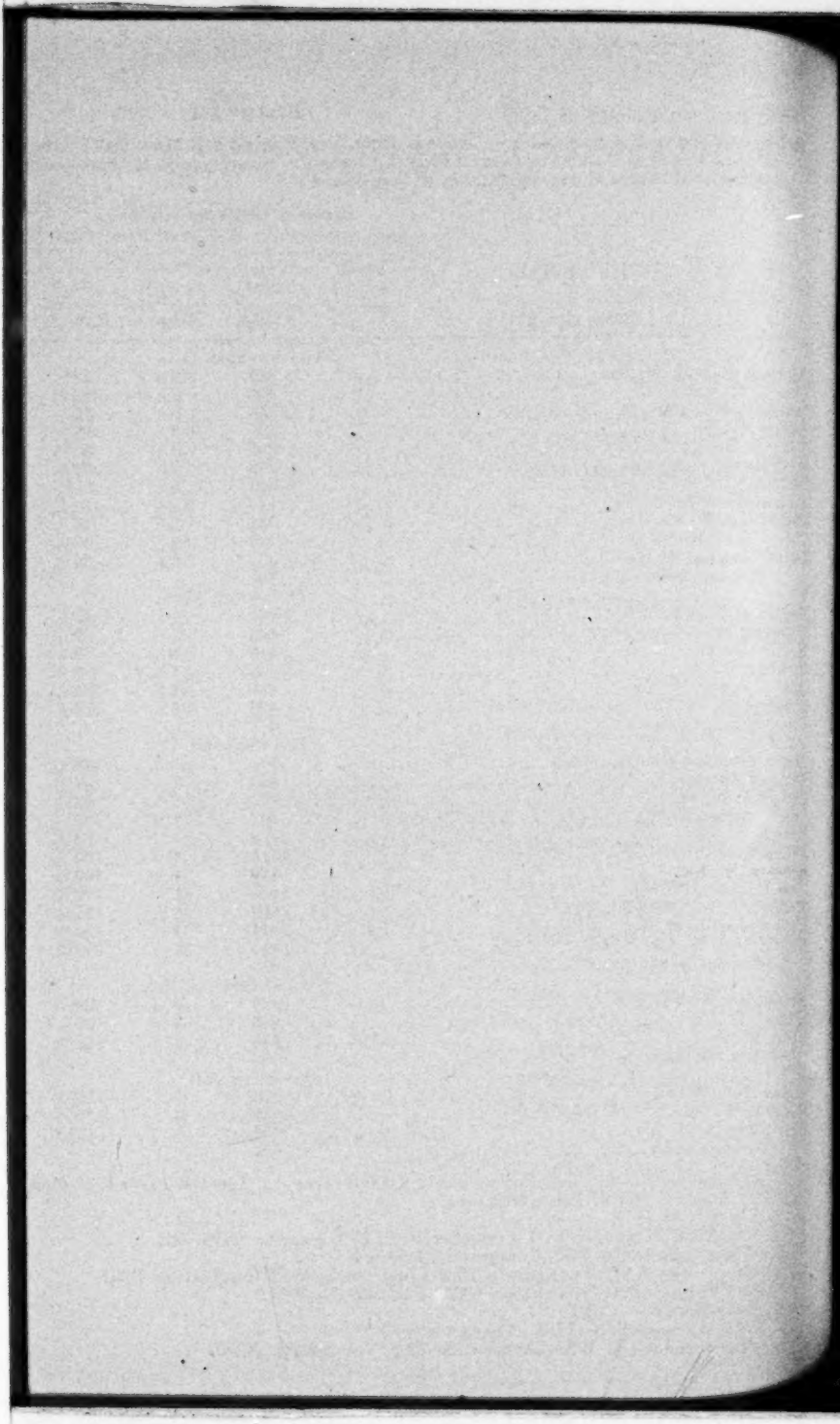
(Rates in Cents per 100 lbs.)

Points of origin	Miles	Route	Rate	Revenue per Ton-mile: Based on actual mileage (cents)	Revenue per Ton-mile: Based on average mileage (cents)	Revenue per Car-mile: Based on actual mileage (cents)	Revenue per Car-mile: Based on average mileage (cents)
To Cleveland, O.							
North Mountain, W. Va.	345	2	80½	4.66	5.19	46.6	51.9
French, W. Va.	306	2	80½	5.26	5.19	52.6	51.9
Potomac, Md.	274	2	68	4.96	4.39	49.6	43.9
Keyser, W. Va.	285	2	68	4.77	4.39	47.7	43.9
Romney, W. Va.	296	2	80½	5.44	5.19	54.4	51.9
West Romney, W. Va.	298	2	80½	5.40	5.19	54.0	51.9
McNeil, W. Va.	314	2	92½	5.89	5.97	58.9	59.7
Cunningham, W. Va.	317	2	92½	5.83	5.97	58.3	59.7
Petersburg, W. Va.	332	2	96½	5.81	6.23	58.1	62.3
Cherry Run, W. Va.	339	3	80½	4.75	5.19	47.5	51.9
Little Cacapon, W. Va.	301	2	80½	5.35	5.19	53.5	51.9
Average miles	310						
To Detroit, Mich.							
Paw Paw, W. Va.	451	4	89	3.95	3.89	39.5	38.9
Potomac, Md.	436	4	79	3.62	3.46	36.2	34.6
Keyser, W. Va.	447	4	79	3.53	3.46	35.3	34.6
Romney, W. Va.	456	4	89	3.90	3.89	39.0	38.9
West Romney, W. Va.	458	4	89	3.88	3.89	38.8	38.9
Cherry Run, W. Va.	490	5	89	3.63	3.89	36.3	38.9
Average miles	457						
To Cincinnati, O.							
North Mountain, W. Va.	471	1	100½	4.26	4.73	42.6	47.3
Berkeley Springs, W. Va.	450	1	104½	4.64	4.92	46.4	49.2
Paw Paw, W. Va.	413	1	100½	4.86	4.73	48.6	47.3
Green Springs, W. Va.	403	1	100½	4.99	4.73	49.9	47.3
Keyser, W. Va.	378	1	83½	4.42	3.93	44.2	39.3
Milleson, W. Va.	411	1	100½	4.89	4.73	48.9	47.3
Romney, W. Va.	419	1	100½	4.77	4.73	47.7	47.3
West Romney, W. Va.	421	1	100½	4.77	4.73	47.7	47.3
McNeil, W. Va.	437	1	112½	5.15	5.29	51.5	52.9
Little Cacapon, W. Va.	411	1	100½	4.89	4.73	48.9	47.3
Cherry Run, W. Va.	464	1	100½	4.33	4.73	43.3	47.3
Average miles	425						
To Indianapolis, Ind.							
Wapacomo, W. Va.	528	6	108	4.09	4.00	40.9	40.0
McNeil, W. Va.	546	6	120	4.40	4.46	44.0	44.6
Glebe, W. Va.	539	6	116	4.30	4.31	43.0	43.1
Average miles	538						
To Chicago, Ill.							
Cherry Run, W. Va.	776	7	116½	3.00	3.41	30.0	34.1
Romney, W. Va.	637	8	116½	3.66	3.41	36.6	34.1
West Romney, W. Va.	639	8	116½	3.65	3.41	36.5	34.1
Average miles	634						

Revenue per car-mile based on weight of 2,000 lbs. per car, Agent Wilson's I. C. C. A-149.

Explanations of Route Numbers:

1. Via B. & O. R. R.
2. B&ORR Cumberland-WM. Connellsville-PLE-Youngstown-Erie RR.
3. WM. Connellsville-PLE-Youngstown-Erie RR.
4. MC-Toledo-NYC-Youngstown-PLE-Connellsville-WM-Cumberland-B&O.
5. MC-Toledo-NYC-Youngstown-PLE-Connellsville-WM.
6. B&O-Hamilton-CI&T.
7. WM—Connellsville—PLE—Youngstown—NYC.
8. B&O-Cumberland-WM-Connellsville-PLE-Youngstown-NYC.



and average mileage to destinations. That is the document now shown to me.

Said document was thereupon offered and admitted in evidence marked as Defendants' Exhibit No. 201, which said exhibit No. 201 is in the following form:

(Here follow Defendants' Exhibit No. 201, marked side folio 715)

[fol. 716] I have prepared an analysis of loss and damage paid by the Baltimore & Ohio Railroad on fruits and vegetables during the year 1925 and the year 1926. This statement prepared by me includes the losses on all fruits and vegetables in those years. That is the statement now shown to me.

Said statement was thereupon offered and admitted in evidence and marked as Defendants' Exhibit No. 203, which said exhibit is in the following form:

[fol. 717]

EXHIBIT No. 203

Analysis of Loss and Damage Payments of Baltimore and Ohio Railroad

	Total claim payment, all commodities	Percentage of freight revenue
Payments during year 1925	$1.682698	.869
Payments during year 1926	1.694038	.814

Heaviest Contributors to Loss and Damage Freight-claim Payments

Commodities	Year 1926	% to total	Year 1925	% to total
Fresh fruits & vegetables	$302,685	17.9	$291,751	17.3
Cement, lime, plaster, clay & products	150,466	8.9	130,987	7.8
Glass, glassware & crockery	106,861	6.3	93,927	5.6
Coal & coke	98,870	5.8	89,051	5.3
Live stock	93,528	5.5	98,086	5.8
Furniture (New)	88,153	5.2	89,404	5.3
All other iron and steel articles	68,339	4.0	65,484	3.9
Clothing, dry goods & notions	66,978	3.9	79,513	4.7
Machinery & hardware	51,422	3.0	52,485	3.1
Stoves, furnaces, radiators & parts	45,036	2.7	42,251	2.5

[fol. 718] During the year 1925 the Erie Railroad paid claims for damage in certain cases, bearing the total loss itself. During that year it paid losses on citrus fruit totaling $19,737.70; for similar claims on deciduous fruit, $100,537.00 during that year, and on vegetables amounted to $45,002.67. During the year 1926, on citrus fruit this amounted to $11,031.36; on deciduous fruit, $137,305.30; on vegetables, $6,930.15.

During 1926 the loss and damage claims paid in toto by the Erie Railroad amounted to $2.85 average per car on deciduous fruits and vegetables.

ROBERT ADAMS was thereupon called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

I am Assistant General Auditor of the Southern Pacific Company. I have been in their accounting department for twenty-five years. The document now shown to me consisting of 13 pages and marked for identification as Defendants' Exhibit No. 204, was prepared under my direction and is true to the best of my knowledge and belief. Pages one to 5 of this exhibit state the net railway operating income, the property investment and rate of return for the years 1922 to 1926, inclusive, for the 23 principal carriers concerned in the transportation of the traffic covered by the order shown. This exhibit shows that the carriers for none of these years have earned the 5.75 per cent on property investment.

Page 6 of this exhibit shows the operating ratio for these [fol. 719] roads for the same years, divided between the Western District roads and Eastern District roads. Page 7 shows the same information, including taxes on railroad operating expense.

The remainder of the pages of this exhibit are self-explanatory and show the increased cost between 1915 and 1926 of various items and materials, labor and increase in tax accruals.

Thereupon there was offered and admitted in evidence Defendants' Exhibit No. 204, which is in the following form:

(Here follows Defendants' Exhibit No. 204, marked side folio pages 720-733, inc.)

[fol. 734] The document now shown to me, marked as Defendant's Exhibit No. 205, shows a statement of the net income of the shortline railroads, whose names are specified thereon, for the year 1926, and the loss in freight reve-

Exhibit No. 204

13 Pages

Witness: R Adams

87 7/30/27

BEFORE THE

Interstate Commerce Commission

California Growers' and Shippers' Protective League

vs.

The Atchison, Topeka and Santa Fe Railway Company, Et Al.

I. C. C. Docket No. 19130

Presented in
Behalf of Railroads by
Southern Pacific Company

OPERATING RATIOS, RAILWAY OPERATING EXPENSES TO RAILWAY OPERATING REVENUES

	FISCAL YEARS ENDING JUNE 30th							CALENDAR YEARS ENDING DECEMBER 31st										
	1910 %	1911 %	1912 %	1913 %	1914 %	1915 %	1916 %	1916 %	1917 %	1918 %	1919 %	1920 %	1921 %	1922 %	1923 %	1924 %	1925 %	1926 %
WESTERN DISTRICT																		
Atchison, Topeka & Santa Fe Ry. System	66.44	65.79	66.15	66.48	66.12	64.67	62.69	61.27	63.57	72.52	74.77	80.51	75.67	74.14	72.51	72.35	69.02	65.35
Chicago & Alton R.R.	64.68	71.59	74.89	84.21	85.77	77.73	71.07	70.29	73.73	84.09	93.20	97.44	84.12	85.70	75.57	77.44	75.38	76.92
Chicago & Northwestern Ry.	70.66	71.10	71.87	70.45	72.31	69.88	67.96	66.46	72.75	84.14	85.94	94.82	89.17	81.58	82.69	80.65	77.84	78.23
Chicago, Burlington & Quincy R.R.	72.14	67.84	70.38	67.04	67.49	66.33	69.29	59.74	64.27	77.61	78.42	86.32	76.00	76.87	78.41	73.74	73.31	72.19
Chicago, Milwaukee & St.Paul Ry.	66.21	69.62	72.24	68.90	66.82	67.78	65.43	66.69	74.90	91.75	98.15	97.94	87.13	82.57	79.59	77.28	80.52	79.96
Chicago, St.Paul, Minneapolis & Omaha Ry.	65.55	66.85	69.54	70.32	70.48	67.86	64.38	65.25	73.76	84.11	84.08	88.98	86.69	86.29	82.91	79.49	80.00	80.48
Colorado & Southern Lines	64.71	65.63	68.98	70.46	73.07	72.09	63.32	61.04	61.71	74.75	76.44	82.33	72.80	76.28	88.00	78.80	78.57	78.03
Denver, Rio Grande Western R.R. System	67.06	68.22	73.96	69.73	69.77	65.48	59.22	58.42	69.41	80.68	78.00	80.20	85.05	78.87	84.82	86.61	73.73	78.33
Great Northern Ry.	69.94	61.76	57.41	58.78	66.14	54.81	54.00	58.35	66.92	83.96	81.75	91.23	79.45	76.98	72.25	68.20	65.98	64.14
Illinois Central System	74.57	71.60	80.19	77.62	75.93	73.64	72.10	69.42	70.64	81.98	90.46	94.84	84.32	77.86	80.48	77.45	76.13	77.39
Missouri Pacific R.R.	70.82	82.10	75.74	72.91	73.12	73.11	75.01	73.31	69.99	81.73	89.08	95.45	83.87	84.83	85.46	79.63	78.27	76.16
Northern Pacific Ry.	68.09	61.70	60.90	62.05	61.16	58.74	53.16	53.85	60.41	72.76	79.30	89.30	88.12	75.98	78.77	74.02	71.90	70.12
Northwestern Pacific R.R.	69.13	74.13	73.26	69.93	70.84	72.83	63.73	63.31	63.92	69.69	78.75	81.96	73.73	71.25	73.91	72.66	73.85	73.27
St.Louis-San Francisco Ry. System	69.66	67.94	68.19	66.69	74.06	69.45	67.72	67.11	66.38	79.76	77.94	91.05	74.43	75.53	73.67	70.96	69.61	69.83
Southern Pacific Lines	60.10	62.38	63.51	63.77	64.04	64.65	62.57	61.89	61.38	72.54	76.72	83.65	78.09	73.13	73.48	72.46	72.73	71.58
Texas & Pacific Ry.	72.40	78.27	78.41	81.71	76.33	77.22	72.12	68.91	67.75	80.84	83.23	89.52	79.65	81.24	76.65	74.72	75.00	74.72
Union Pacific System	55.03	58.53	61.21	59.15	61.49	60.73	56.56	56.11	60.17	65.41	69.98	76.95	73.87	74.81	72.26	71.32	70.17	68.66
Western Pacific R.R.	Not Operating		81.72	73.46	82.78	77.43	64.13	59.86	68.54	71.25	69.89	78.48	85.85	78.66	75.42	79.87	72.75	70.22
TOTAL WESTERN DISTRICT	65.70	66.87	68.28	67.15	68.01	66.67	63.24	62.78	66.06	77.86	80.66	87.82	80.12	77.35	76.77	74.93	73.45	72.39
EASTERN DISTRICT																		
Baltimore & Ohio R.R.	70.04	71.91	71.81	73.92	75.24	69.48	71.83	72.21	77.11	98.19	93.02	97.56	83.81	82.16	77.98	77.81	75.40	73.83
Erie R.R. (Including Chicago & Erie)	68.76	68.37	72.03	70.57	74.02	73.49	65.48	72.73	84.58	98.68	94.13	108.88	93.55	93.66	81.27	80.43	78.65	79.84
New York Central R.R. (Includes B & A and Ohio Central Lines)	69.51	73.60	70.68	71.08	76.59	70.14	63.52	64.21	72.41	78.83	80.04	95.98	76.72	73.88	77.41	75.73	75.24	74.82
Pennsylvania R.R. System	70.25	73.41	73.85	75.86	77.28	75.70	69.61	70.85	77.39	89.91	93.46	103.58	87.56	82.35	81.77	80.16	78.32	77.52
Wabash Ry.	71.09	74.84	81.65	77.73	81.29	79.85	68.53	66.03	70.48	83.37	91.28	100.21	85.29	83.31	78.11	76.46	73.07	73.18
TOTAL EASTERN DISTRICT	69.97	72.90	72.88	74.11	76.90	73.81	67.91	69.25	76.89	88.82	90.18	101.11	84.81	82.58	79.89	78.43	76.89	76.28
GRAND TOTAL WESTERN AND EASTERN DISTRICTS	67.42	69.31	70.18	70.83	71.64	69.96	65.19	65.48	70.85	82.80	84.64	93.37	82.10	79.80	78.28	76.42	74.95	74.06

Prepared by Accounting Department, Southern Pacific Co.,
San Francisco, Calif., March 18, 1927.

OPERATING RATIOS, RAILWAY OPERATING EXPENSES AND TAXES, TO RAILWAY OPERATING REVENUES

	Fiscal Years Ending June 30th							Calendar Years Ending December 31st										
	1930 %	1931 %	1932 %	1933 %	1934 %	1935 %	1936 %	1916 %	1917 %	1918 %	1919 %	1920 %	1921 %	1922 %	1923 %	1924 %	1925 %	1926 %
WESTERN DISTRICT																		
Atchison, Topeka & Santa Fe Ry. System	70.26	69.02	70.05	70.41	71.10	69.34	67.24	65.97	70.78	78.31	80.74	85.23	82.15	82.31	81.02	77.88	76.43	73.87
Chicago & Alton R.R.	68.03	74.49	78.06	81.26	89.79	81.30	74.54	73.64	77.11	87.81	96.12	100.11	87.44	89.39	79.39	81.47	79.51	80.85
Chicago & Northwestern Ry.	74.64	75.13	76.46	74.74	76.34	75.48	73.16	72.58	77.99	91.18	90.75	100.08	95.01	87.74	88.38	86.91	84.58	84.15
Chicago, Burlington & Quincy R.R.	75.30	71.26	74.15	70.78	72.79	70.81	64.64	64.16	72.14	83.35	83.69	91.02	81.75	83.48	83.82	80.28	80.20	79.31
Chicago, Milwaukee & St. Paul Ry.	70.04	73.83	77.19	72.98	71.30	72.97	70.41	72.66	80.63	96.89	96.66	105.00	93.15	88.72	84.66	84.97	84.03	85.53
Chicago, St.Paul, Minneapolis & Omaha Ry.	70.03	71.35	74.65	75.17	75.82	73.52	71.63	70.30	79.94	90.07	89.49	94.52	91.19	85.16	88.55	85.28	85.79	85.30
Colorado & Southern Lines	67.52	68.59	72.62	74.09	78.68	75.42	67.58	65.62	67.65	79.28	79.94	86.57	77.42	81.77	94.14	84.75	84.97	83.78
Denver & Rio Grande Western R.R. System	70.56	71.89	76.72	73.59	74.04	70.16	63.60	62.84	73.94	84.49	82.38	84.26	90.71	84.36	92.28	92.63	80.61	79.47
Great Northern Ry.	66.36	67.04	68.59	64.13	68.38	61.71	60.31	64.92	74.03	91.05	89.84	99.28	87.63	84.81	79.83	77.33	74.51	72.40
Illinois Central System	78.90	75.88	84.67	82.61	80.77	80.69	77.86	74.72	77.59	87.10	95.52	100.06	90.12	84.74	86.19	84.38	82.85	84.03
Missouri Pacific R.R.	74.41	85.86	79.86	75.64	76.32	77.50	79.53	77.16	73.38	85.23	93.88	100.55	87.77	88.85	89.32	83.43	82.20	80.95
Northern Pacific Ry.	66.80	66.63	66.53	67.39	68.29	65.82	59.84	60.71	68.24	79.69	87.83	98.24	91.65	84.35	87.68	82.79	81.05	79.52
Northwestern Pacific R.R.	73.29	78.22	77.36	74.06	75.72	78.17	68.47	67.98	68.97	74.31	83.63	85.85	79.54	78.42	80.92	80.36	81.28	80.27
St.Louis-San Francisco Ry.System	73.20	72.13	72.84	71.16	76.84	74.09	72.19	71.19	71.00	83.62	81.31	94.61	78.89	80.02	78.45	76.07	74.98	74.96
Southern Pacific Lines	63.58	66.24	68.46	68.19	71.46	71.82	67.45	66.78	67.77	78.02	82.13	89.18	84.04	80.60	78.80	79.91	80.25	78.96
Texas & Pacific Ry.	75.93	81.98	82.70	85.53	80.39	81.99	76.93	73.43	73.21	84.63	87.09	92.69	83.88	85.16	81.04	80.16	80.43	79.94
Union Pacific System	58.72	62.38	66.11	64.05	66.94	66.09	61.64	61.05	64.61	72.32	75.00	83.07	80.26	81.66	78.66	78.57	76.94	76.27
Western Pacific R.R.	Not Operating		85.13	77.85	86.85	83.45	68.81	64.41	67.52	77.61	75.34	82.57	96.47	86.36	88.15	85.97	79.09	78.35
TOTAL-WESTERN DISTRICT	69.60	70.86	72.80	71.49	73.12	71.89	68.87	67.80	72.41	83.33	85.97	93.39	86.13	84.06	83.09	81.67	80.22	79.23
EASTERN DISTRICT																		
Baltimore & Ohio R.R.	72.78	74.79	74.18	74.79	78.30	73.21	74.32	75.63	80.44	95.08	95.97	100.52	87.45	85.53	81.83	81.87	79.63	78.52
Erie R.R. (Including Chicago & Erie)	73.26	72.04	75.25	73.66	79.08	78.77	69.12	74.92	87.95	102.37	98.48	112.00	96.85	97.28	84.47	84.22	82.66	82.92
New York Central R.R. (Includes B & A and Ohio Central Lines)	73.66	77.94	75.51	75.73	81.72	76.68	67.13	68.36	76.48	83.63	84.36	100.82	82.94	85.36	82.79	82.05	81.81	81.55
Pennsylvania R.R. System	73.59	77.82	77.91	79.85	81.61	80.34	73.63	75.27	82.07	94.03	97.46	107.22	92.03	86.98	86.40	84.95	83.27	82.80
Wabash Ry.	74.04	77.92	84.65	80.58	84.76	83.21	71.51	69.15	74.03	86.14	94.84	103.00	88.43	87.84	81.82	81.86	77.77	77.96
TOTAL-EASTERN DISTRICT	73.32	76.56	76.89	77.98	81.14	78.32	71.81	73.25	80.64	91.96	94.05	104.86	89.44	87.15	84.43	83.44	82.00	81.62
GRAND TOTAL-WESTERN AND EASTERN DISTRICTS	71.10	73.16	74.49	74.18	76.39	74.58	69.76	70.68	75.80	87.81	89.35	98.17	87.51	85.38	83.69	82.43	80.99	80.28

Prepared by Accounting Department, Southern Pacific Co.,
San Francisco, Calif., March 11, 1927.

COMPARATIVE STATEMENT SHOWING TOTAL NUMBER OF EMPLOYES, HOURS WORKED AND COMPENSATION

FISCAL YEAR ENDING JUNE 30, 1915 AND CALENDAR YEAR ENDING DECEMBER 31, 1926

	NUMBER OF EMPLOYES		HOURS WORKED		COMPENSATION		AVGE. COMP. PER HOUR		% OF INCREASE AVERAGE COMP. PER HOUR 1926 OVER 1915
	1915	1926	1915	1926	1915	1926	1915	1926	
WESTERN DISTRICT									
Atchison, Topeka & Santa Fe Ry. System	52,682	65,052	165,496,840	172,254,290	$ 45,044,270	$ 106,035,026	$.272	$.615	126.1
*Chicago & Alton R. R.	1,732	2,658	24,388,301	22,592,745	6,724,389	14,124,316	.276	.625	126.4
*Chicago & Northwestern Ry.	43,940	48,075	139,635,144	128,879,707	38,482,252	79,653,532	.277	.618	123.1
*Chicago, Burlington & Quincy R. R.	43,048	45,068	132,284,448	115,053,696	38,054,518	72,724,082	.288	.627	117.7
Chicago, Milwaukee & St. Paul Ry.	49,306	50,604	168,265,140	130,685,113	43,278,596	82,480,520	.257	.631	147.9
*Chicago, St. Paul, Minneapolis & Omaha Ry.	8,136	8,162	24,731,524	20,511,212	7,538,804	13,372,733	.281	.652	132.0
Colorado & Southern Ry.	3,349	3,324	9,792,881	8,752,651	2,782,544	5,548,410	.284	.634	123.2
Denver & Rio Grande Western System	9,048	10,933	27,881,496	27,576,300	8,960,731	18,197,804	.300	.615	105.0
Great Northern Ry.	26,399	28,135	82,388,366	74,056,079	22,020,122	41,539,542	.267	.642	140.4
Illinois Central System	58,402	79,621	172,351,646	201,592,441	43,373,356	118,283,281	.252	.587	132.9
Missouri Pacific R. R.	32,581	39,153	95,308,743	103,391,440	25,440,955	63,190,820	.267	.610	128.5
Northern Pacific Ry.	26,386	26,111	87,597,205	68,604,436	24,486,852	44,938,044	.280	.655	133.9
Northwestern Pacific R. R.	2,764	2,079	9,127,180	5,538,454	2,568,877	3,518,133	.281	.635	126.0
St.Louis-San Francisco Ry.	22,530	24,516	68,648,933	63,091,097	18,511,991	38,573,814	.270	.611	126.3
Southern Pacific Lines	55,581	87,057	171,380,848	223,843,300	49,670,726	137,010,815	.290	.612	111.0
Texas & Pacific Ry.	10,261	10,937	30,433,435	27,404,838	8,297,950	15,430,968	.272	.563	107.7
Union Pacific System	38,933	51,018	117,527,354	130,151,104	34,475,677	81,242,775	.293	.670	128.7
Western Pacific R. R.	2,873	4,054	8,353,949	10,099,769	2,601,119	6,672,844	.311	.661	112.5
TOTAL-WESTERN DISTRICT	495,882	592,557	1,539,593,573	1,536,243,732	422,246,650	954,318,661	.274	.621	126.6
EASTERN DISTRICT									
Baltimore & Ohio R. R.	46,176	69,488	143,878,309	181,579,868	40,054,998	118,211,688	.278	.651	134.2
Erie Railroad (Including Chicago & Erie)	35,281	28,046	107,823,604	78,526,702	26,319,926	52,169,119	.244	.664	172.1
*New York Central R. R. (Including B. & A. and Ohio Central Lines)	90,201	111,562	290,440,354	290,885,941	82,562,929	193,612,841	.284	.666	134.5
Pennsylvania R. R. System	197,397	217,641	579,312,756	573,992,776	168,964,245	390,458,738	.292	.680	132.9
Wabash Railway	15,425	18,213	46,359,277	47,126,334	12,645,127	30,427,602	.273	.646	136.6
TOTAL-EASTERN DISTRICT	384,440	444,950	1,167,814,300	1,172,131,621	330,547,225	784,879,988	.283	.670	136.7
GRAND TOTAL-WESTERN AND EASTERN DISTS.	880,322	1,037,507	2,707,407,873	2,708,375,353	752,793,875	1,739,258,649	.278	.642	130.9

*Figures for fiscal year ending June 30th, 1916, used as 1915 figures were not available.

Prepared by Accounting Department Southern Pacific Co.,

San Francisco, Calif., March 12, 1926.

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SOUTHERN PACIFIC COMPANY - PACIFIC LINES

Percentages of Increase of Cost of Material Year 1926 Over Year 1915

	Unit	1926	1915	Increase %
Air Brake Material	Disc.	Plus 39%	Less 25%	85
Asbestos Fibre	Lb.	$ .05	$ .035	43
Axes, 3½ to 4½ Lb.	Doz.	10.75	8.25	36
Axles, Car Reg. & Tender	Cwt.	2.40	1.30	85
Driving & Trailing	Cwt.	3.15	1.90	66
Babbitt, Special Hardened	Cwt.	28.82	20.90	38
Anti Friction	Cwt.	18.22	14.10	29
Batteries, Dry #6	Ea.	.2815	.16	76
Bearings, Journal	Cwt.	14.75	12.55	18
Belting, Leather 4" Std.	Ft.	.384	.421	Dec. 9
Blades, Hack Saw 5/8 x 12"	Gross	4.43	5.844	23
Bolts, Machine, Large	Disc.	60-10-5%	85-15%	168
Bolts, Carriage	Disc.	60-10%	80-2½ %	85
Boxes, Journal, 4½ x 8	Ea.	$ 5.20	$ 1.75	197
Boxes, Journal, 5 x 9	Ea.	6.35	2.22	186
Brass, Sheet #20 (Half Hard)	Lb.	.1875	.215	Dec.13
Brass, #1 Ex. Mill	Doz.	5.40	3.00	80
Brushes, Stence #25 #360	Doz.	21.00	15.04	40
Bunting, Anchor 18"	Roll	11.25	5.25	114
Cars, Motor #36 F.M. Co.	Ea.	225.00	135.00	67
Castings, Steel C.S. 14				
10 to 20 Lbs.	Lb.	.11½	.04	188
21 to 100 Lbs.	Lb.	.07	.04	75
101 to 250 Lbs.	Lb.	.06	.04	50
251 to 1000 Lbs.	Lb.	.05½	.04	44
Over 1000 Lbs.	Lb.	.05½	.04	38
Cement, Portland	Bbl.	1.85	1.40	32
Coal, Lump Stove	NT	2.15	1.70	27
Coal, Blacksmith	Ton	2.70	1.50	80
Coal, Locomotive	NT	2.91	2.51	16
Coke, 72 Hr. Foundry	Ton	5.00	2.75	82
Cord, Sash #8	Lb.	.34	.20	70
Covering, Train Pipe 85% Magnesia	Disc.	65%	69-5%	5
Distillate (Tank Cars)	Gal.	$ .089	$ .055	62
Duck, White Cotton #6-36"	Yd.	.35	.2475	41
Duck, White Cotton #8-36"	Yd.	.34½	.22	57
Ferrules, Copper Flue	Lb.	.35	.1815	93
Files	Disc.	70-10-2½%	80-5%	38
Fuel Oil (Locomotive)	Bbl.	1.07	.60	78
Gasoline (Drums)	Gal.	.13	.09	44
Gaskets Grade E	Lb.	.85	.60	42
Glass, Polished Plate (Com'l.Thickness)	Disc.	86%	90-30-5%	11
Glass, Window (American)	Disc.	90-40%	90-30-5%	Dec. 1
Hinges, Strap Light	Disc.	70%	70-10%	11
Hinges Strap Ex. Heavy	Disc.	70-10%	75-5%	14
Hose-Air Brake 1-3/8"	Ft.	$ .439	$ .30	46
Iron, Pig #1	GT	18.50	9.50	95
Keystone Iron	Cwt.	$ 5.80	$ 4.25	37
Lead, Pig #1	Cwt.	6.00	3.70	116
Lead, White in Oil	Cwt.	11.40	2.25	407
Leather, Harness #1	Lb.	.38	.42	Dec. 10
Manganese, Ferro 80%	Ton	108.50	68.00	51
Matting, Rubber	Lb.	.20	.162	24
Nails, Wire.	Cwt.	3.10	1.45	114
Oil, Linseed, Raw (Cases)	Gal.	.93	.7275	28
Oil, Linseed, Boiled 5's	Gal.	.98	.66	49
Paint #20a 5's (Brown)	Gal.	1.47	.975	51
Paint #20a Bbls. (Colonial Yellow)	Gal.	1.60	.875	83
Pipe Wrot, 3" - #1	C Ft.	54.83	34.09	61
Pipe Lead	Lb.	.1338	.076	73
Potash, Caustic	Lb.	.0975	.075	30
Potash, Yellow Prussiate	Lb.	.20	.24	Dec. 17
Powder, 40% Dynamite (Ammonia LF)	Cwt.	12.50	9.75	28
Putty, Bladder	Cwt.	4.50	2.35	92
Remover, Varnish - 5's	Gal.	1.00	1.40	Dec. 29
Rope, Manila #1	Lb.	.165	.0975	69
Screws, Brass Machine, Rd. Hd.	Disc.	75-10-10%	80-10%	13
Screws, Iron Machine	Disc.	80-10-10%	80-10-5-2%	Dec. 4
Seals, Car	M	$ 2.80	$ 1.20	133
Shoes, Brake	MT	43.00	30.00	43
Soap, Laundry	Lb.	.0495	.031	60
Spelter, Coarse	Lb.	.20	.19	5
Spelter, Fine	Lb.	.20	.25	Dec. 20
Spikes, Track	Cwt.	2.42	1.50	61
Steel, Bar	Cwt.	2.30	1.20	92
Steel, Boiler	Cwt.	1.93	1.31	47
Steel, Fire Box	Cwt.	2.28	1.71	33
Steel, Tank	Cwt.	1.78	1.05	70
Steel, Tool, Bars	Cwt.	14.00	10.00	40
Thermit, R.R.	Cwt.	31.00	28.40	9
Tires, Steel CS 15 33" OD & Over	Cwt.	5.60	3.00	87
Torpedoes 1½ x 2½	Gross	3.75	2.15	74
Turpentine (cases)	Gal.	.94	.56	68
Waste, Colored Cotton	Lb.	.09	.485	98
Wheels, Cast Iron	Cwt.	2.10	.651	223
Wrenches, Stillson	Disc.	75-10%	80-5%	18
Track Bolts	Cwt.	$ 3.30	$ 1.675	87
Tie Plates	NT	31.60	24.00	32
Steel Rails, new	GT	43.50	30.00	45
Fir Dimension	MBM	17.00	8.00	113
Redwood Dimension	MBM	31.00	16.00	94
Bridge Stringer, Fir	MBM	21.00	8.50	147
Bridge Tie, Fir	MBM	18.00	8.00	125
Cross Tie, Fir	MBM	17.00	7.50	127

Prepared in office of Purchasing Agent Southern Pacific Co.-Pacific Lines
San Francisco, Calif., March 11, 1927.

Page 1

UNION PACIFIC RAILROAD COMPANY

Percentages of Increase in Cost of Material Year 1926 Over 1915

	Unit	1926	1915	Increase %
Air Pumps No. 5 ER	Ea.	$277.88	$150.00	85
Axes 3-1/2 to 4 lb.	Do.	11.50	6.00	192
Axles car, engine & tender	Cwt.	2.85	1.50	90
Axles Driving & Trailing	Cwt.	5.80	3.50	65
Batteries Dry #6	C	25.50	13.50	31
Bearings Journal	Cwt.	15.00	14.5??	3
Belting Rubber 5" 4 ply	Ft.	.35	.43	Dec. 19
Belting Leather 4" Double	Ft.	.80	.67	19
Blades Hacksaw 9/16" x 12"	Gro.	4.10	5.67	Dec. 28
Bolts Machine Large	Misc.	60%	80-7?%	116
Bolts Carriage	Misc.	50-10-2?%	70-10-5%	71
Boxes Journal 4-1/4 x 8	Ea.	$ 5.15	$ 1.76	193
Boxes Journal 5 x 9	Ea.	8.70	2.28	282
Brass Sheet	Lb.	26-3/8	.25	6
Brooms Corn 3??	Do.	5.00	2.75	82
Brushes Marking No. 2	Gro.	6.64	5.57	19
Brushes Paint 3"	Do.	14.68	8.17	80
Cars Section Motor #19 Bodn	Ea.	442.50	289.10	53
Castings Steel				
10 to 20 lbs.	Cwt.	11.00	4.12	167
21 to 100 lbs.	Cwt.	8.25	3.72	122
101 to 250 lbs.	Cwt.	8.00	3.62	121
251 to 1000 lbs.	Cwt.	7.25	3.32	118
Over 1000 lbs.	Cwt.	7.00	3.12	124
Cement Portland	Bbl.	2.15	1.25	72
Coal Smithing	NT	7.09	5.35	32
Coke 72 hour	NT	8.50	3.50	143
Covering Asbestos Pipe	Misc.	35%	65-5%	95
Cord Sash #8	Lb.	$ .35	$ .21	67
Duck White Cotton #8 40"	Yd.	.425	.26	63
Ferrules Copper Flue	Lb.	.33?	.33	Dec. 5
Files	Misc.	60-5%	80-10-10-5%	147
Gasoline (tank car)	Gal.	$ .128	$ .0625	105
Glass Polished Plate	Misc.	85%	90-30-5%	126
Glass Window DSAA	Misc.	88%	90-40-5%	111
Hinges Strap 6"	Ea.	$ 1.32	$ .51	159
Hose Air Brake 1-3/8"	Ft.	.55	.29	90
Iron Angle	Cwt.	2.00	1.57	27
Iron Staybolt	Cwt.	7.25	4.15	75
Kerosene (tank car)	Gal.	.08?	.02?	300
Lead Pig	Cwt.	8.53	4.10	107
Lead White Lead in oil	Cwt.	12.??	6.60	85
Leather Harness	Lb.	.59	.45	31
Matting Rubber	Lb.	.19	.17	12
Nails Wire	Keg	2.65	1.37	93

	Unit	1926	1925	Increase %
Oil Linseed Raw (50 gal drums)	Gal.	$ .81	$ .53	53
Oil Linseed Boiled (50 gal drums)	Gal.	.84	.54	55
Paint OS 9	Gal.	1.85	1.21	
Paint OS 11	Cwt.	6.03	3.60	4
Paint OS 201	Gal.	1.86	.91	104
Picks Clay	Ea.	5.10	4.25	20
Pipe Cast Iron	NT	41.00	17.00	141
Pipe Steel 1-1/4"	Misc.	64.85%	80-5%	85
Pipe Lead 1-1/2"	Cwt.	$ 12.50	$ 6.??	85
Potash Yellow Prussiate	Lb.	.26	.33	Dec. 21
Powder 40% Dynamite	Cwt.	14.50	11.50	43
Putty Bladder	Cwt.	4.40	2.725	61
Rope Manilla 1"	Cwt.	25.00	11.25	122
Screws Brass Wood	Misc.	85.93%	90%	41
Screws Iron Wood	Misc.	88.50%	92.4%	51
Seals Car	M	$ 3.75	$ 2.25	67
Shoes Brake	NT	40.00	33.00	21
Soap Common Soft	Bbl.	6.50	4.00	63
Spelter Fine Brazing	Lb.	.28	.25	12
Spikes Track	Cwt.	2.60	1.50	73
Steel Bar	Cwt.	2.30	1.52	51
Steel Boiler	Cwt.	2.39	1.28	87
Steel Fire Box	Cwt.	2.74	1.79	53
Steel Tank	Cwt.	2.40	1.20	75
Steel Tool	Lb.	.18	.11	64
Tires Locomotive Driving	Cwt.	5.505	3.00	84
Torpedoes	Gro.	4.50	3.00	50
Turpentine (50 gal drums)	Gal.	.77	.45	71
Tubing Copper	Lb.	.24?	.375	Dec. 37
Waste Colored Cotton	Cwt.	11.63	4.25	174
Wheels Cast Iron	Cwt.	2.05	1.03	99
Wicking Candle	Lb.	.20	.07½	167
Wrenches Stillson 14"	Ea.	.94	.81	16
Trackbolts	Cwt.	4.00	1.95	105
Tie Plates	NT	46.00	24.00	92
Rail Joints	Cwt.	3.50	1.75	100
Steel Rail	G.T.	43.00	30.00	43
Fir Dimension	M'BM	17.00	8.00	113
Tie. Fir Bridge	M'BM	19.00	8.50	124
Ties Oak Cross	Ea.	1.54	.79	95
Ties Oak Switch	M'BM	41.00	23.00	78
Ties Fir Cross	M'BM	15.00	8.00	88
Ties Fir Switch	M'BM	16.00	8.50	88
Ties Wye, Pine Cross	Ea.	.95	.66	44

Purchasing Agent's Office
Omaha, Nebraska, March 3, 1927.

Union Pacific System

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ERIE RAILROAD COMPANY

Percentage of Increase of Cost of Material 1926 Over 1915

	Unit	1926	1915	Increase %
Axles - Driving	Cwt.	$ 4.05	$ 2.303	76
Engine Truck	Cwt.	3.15	1.703	85
Freight and Passenger	Cwt.	4.05	1.603	153
Angle Bars - Steel	Cwt.	2.90	1.65	76
Bolts - Machine	Disc.	65.8%	81.5%	85
Carriage		63%	80.5%	90
Track	Cwt.	$ 3.90	$ 1.75	123
Brake Beams - Freight	Ea.	4.00	2.65	51
Castings - Malleable CM Frt.Car	Cwt.	9.90	3.20	209
Castings - Cast Iron				
A - Engine	Cwt.	4.05	2.10	93
B - Pass. Car	Cwt.	4.05	1.75	131
C - Freight	Cwt.	4.05	1.75	131
E - M of Way	Cwt.	4.05	1.75	131
Castings - Steel				
Up to 30# each	Cwt.	$10.27	$ 5.70	80
31# to 50# each	Cwt.	8.70	4.10	112
Over 50# each	Cwt.	7.59	3.90	95
D.W.Centers	Cwt.	5.36	2.75	95
Eng. Frames	Cwt.	5.81	3.25	79
Castings - Brass	Lb.	.13¾	.21¾	Dec. 37
Couplers - Freight car 5 x 7	Pr.	32.30	16.75	93
Cement	Bbl.	2.25	1.10	105
Charcoal	Bu.	.35	.08	338
Duck - White	Disc.	60%	55%	Dec. 11
Gasoline	Gal.	$ .17	$ .12	42
Iron - Bar	Cwt.	2.20	1.20	83
Oil - Fuel	Gal.	.06½	.0289	125
Kerosene	Gal.	.09⅝	.046	107
Linseed	Gal.	.90	.64	41
Nails - Wire	Cwt.	2.65	$ 1.55	71
Nuts - Hot pressed	Disc.	4.25 Off List	6.65 Off List	Dec. 36
Cold Punched	Disc.	4.35 " "	8.00 " "	Dec. 46
Pipe - Wrot - 1" to 3"	Disc.	64.85%	80-5%	85
Rail - Steel	G.T.	$43.50	$30.80	41
Rivets - Steel	Cwt.	2.40	1.40	71
Rope - Manila	Lb.	.21	.11¾	79
Wire	Disc.	35-10-10-5%	60-10-5-2-2½	50
Steel - Bar	Cwt.	$ 2.00	$ 1.20	67
Tank	Cwt.	1.90	1.20	58
Spikes - Track	Cwt.	2.80	1.35	107
Boat	Cwt.	3.50	1.40	150
Springs - Elliptic	Cwt.	6.00	3.70	62
Coil	Cwt.	3.50	1.95	79
Tires - 33" and over	Cwt.	5.60	3.25	72
Tie Plates	Cwt.	2.50	2.70	Dec. 7
Tubes - Boiler 2" - #11 Ga.	Ft.	.16	.07¾	106
Washers		6.80 Off List	7.70 Off List	Dec. 12
Waste-Cotton	Lb.	.09⅜	.05½	77
Wool Long Fibre	Lb.	.15¾	.06¼	152

Prepared by Comptroller's Office

New York, N. Y. March 7, 1927.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM

Comparison of Prices and Costs of Principal Items of Railroad Material Weighted on Basis of Relative Quantities Purchased in Year 1914

Kind of Material	Quantity		Unit of Measure	1914 Cost	1914 Price	1926 Cost	1926 Price
Air Brake Material			%	$ 150,712	25.	$ 276,300	37.5
Axles	4,900,000	#	Cwt..	116,130	2.37	223,930	4.57
Crank Pins	302,890	#	Cwt.	15,902	5.25	33,868	10.39
Babbitt	472,380	#	Cwt.	89,747	19.00	82,661	17.50
Bearings	3,815,170	#	Cwt.	542,527	14.20	588,254	15.13
Belts, Machine			%	41,529	83.43	76,406	61.53
Belts, Carriage			%	14,756	82.5	40,933	57.25
Belts, Truck	4,424,450		Cwt.	84,068	1.90	170,349	3.85
Beams, Brake, Pass.and Frt.				64,567		109,520	
Brake Shoes	4,390.5	MC	Ton	194,137	44.67	213,175	49.00
Bridge Material	5,143,170	#	Cwt.	115,721	2.25	221,136	4.30
Cement, Portland	67,580	Bbl.	Bbl.	87,828	1.30	155,388	2.30
Channels, Beams, Tees, etc.	954,030	#	Cwt.	14,886	1.75	27,667	2.90
Couplers and Parts				140,900		130,007	
Frogs and Switches				122,200		135,866	
Bar Iron	8,174,700	#	Cwt.	89,922	1.10	220,737	2.70
Grey Iron Castings	10,797,200	#	Cwt.	245,141	2.279	464,928	4.31
Mall. Iron Castings	1,192,900	#	Cwt.	44,734	3.75	127,044	10.65
Steel Castings	4,890,200	#	Cwt.	181,894	3.75	425,389	8.77
Engine Bolt Iron	3,442,125	#	Cwt.	128,494	3.50	211,008	6.13
Staybolt Iron	2,097,250	#	Cwt.	104,860	5.00	142,533	7.75
Wrot and Steel Pipe			%	128,200	67.9	263,796	34.88
Roof, Car	2,117	Sts.	Each	47,623	22.50	108,631	51.83
Rods Ash	8,358,700	#	Cwt.	58,511	.70	115,398	1.38
Steel Plates and Sheets	9,893,400	#	Cwt.	261,262	1.63	234,474	2.37
Tie Plates	15,977	Tons	Ton	373,651	24.75	684,914	45.50
Boiler Tubes				187,190		232,027	
Waste	748,800	#	Cwt.	53,721	7.18	75,948	10.15
Freight Car Wheels	77,393	Whls.	Each	639,031	8.257	977,896	12.89
Oil Boxes	9,370	Box.	Each	28,484	3.225	57,845	6.24
Gasoline	1252,188	Gals.	Gal.	28,232	.023	29,777	.113
Duck Canvas	69,525	Yds.	%	18,300	33.	18,982	33.73
Track Shovels	1,774	Pcs.	Pcs.	10,821	6.875	14,812	18.38
Track Spikes	1,823,440	#	Cwt.	105,332	1.30	200,148	2.63
Billetts	142,310	#	Cwt.	2,364	1.39	3,541	1.95
Bolsters	1,434,270	#	Cwt.	48,295	3.3625	72,239	4.96
Locomotive Tires	8,214,840	#	Cwt.	240,700	2.70	329,539	3.94
Frames	2,782	Grs.	Grs.	33,384	12.00	37,279	13.40
Locomotive Springs	374	Sets	Sets	1,683	4.50	7,574	20.25
Head Light Oil	302,633	Gal.	Gal.	15,533	.0309	35,184	.07
Woven Wire Fencing			%	2,272	75.	8,916	60.20
Ferrules, Copper Pins	60,538	#	Lbs.	10,340	.1708	21,188	.35
Wire Rope			%	4,198	70.	18,442	30.44
Nuts	1,732,000	#	%	50,221	7.30	77,074	4.45
Boiler Lagging			%	27,087	74.25	34,114	70.00
Springs, Engine and Car	1,748,000	#	Cwt.	39,780	2.25	94,834	5.33
Lag Screws			Cwt.	2,262	65.	3,234	89.00
Hose, Air Brake	59,138	Ft.	Ft.	20,721	.35	33,134	.56
Hose, Fire	58,635	Ft.	Ft.	9,258	.33	15,777	.57
Cast Pipe	2,634	Tons	Ton	44,739	22.80	105,734	53.88
Lumber			M Ft.	2,188,813		3,385,258	35.29
Rail	75,000	MC	MC	2,250,000	30.00	3,251,250	43.35
Ties	3,500,000		Each	2,128,000	.604	4,151,000	1.186
Fuel o	4,021,740	Tons		4,300,315		20,115,453	
Total				13,974,128		41,439,471	
Total, Exclusive of Fuel				11,485,813		21,324,024	

Increase over average of 1914
Including Fuel 1926 108.61%
Excluding Fuel 85.67%

Chicago Statistical Department, March 7, 1927

o Above includes 3,999,380 barrels of oil which have been reduced to tons by weight only.

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STATEMENT OF RAILWAY TAX ACCRUALS

For Years Ended June 30, 1910, to June 30, 1916, Incl.
and
Calendar Years 1916 to 1926, Incl.

WESTERN DISTRICT

1. A.T.& S.F.Ry.Sys.	6. C.St.P.M.& O.Ry.	11. Mo.Pac.R.R.	15. Sou.Pac.Lines
2. Chgo.& Alt.R.R.	7. Colo.& Sou.Lines	12. Nor.Pac.Ry.	16. Tex.& Pac.Ry.
3. C.& N.W.Ry.	8. D.& R.G.W.Sys.	13. N.W.P.R.R.	17. U.P.System
4. C.B.& Q.R.R..	9. Great Nor.Ry.	14. St.L.-S.F. Sys.	18. West.Pac.R.R.
5. C.M.& St.P.Ry.	10. Ill.Cent.Sys.		

EASTERN DISTRICT

1. B.& O. R.R.	3. N.Y.C.R.R. (Incl.B.& A. and O.C.Lines)	4. Penn. R.R. System
2. Erie R.R. (Incl.C.& E.)		5. Wabash Ry.

	Western District	Eastern District	Total
Year Ended June 30,			
1910	$ 38,279,491	$ 22,121,618	$ 60,401,109
1911	39,131,468	24,324,825	63,456,293
1912	44,306,724	27,491,017	71,797,741
1913	46,672,573	29,384,181	76,056,754
1914	54,275,138	31,017,483	85,292,621
1915	53,110,789	31,203,113	84,313,902
1916	58,902,439	32,557,588	91,460,027
Year Ended December 31,			
1916	62,856,750	35,755,477	98,612,227
1917	88,992,229	43,738,497	132,730,726
1918	90,072,082	48,329,094	138,401,176
1919	95,128,546	49,885,899	145,014,445
1920	119,024,368	57,435,203	176,459,571
1921	114,584,455	61,915,030	176,499,485
1922	126,735,877	65,087,076	191,822,953
1923	128,716,199	75,083,853	203,800,052
1924	132,427,549	73,902,070	206,329,619
1925	135,977,233	78,725,403	214,702,636
1926	141,492,719	87,565,488	229,058,207
Increase 1926 Over 1910	269.6%	295.8%	279.2%

Prepared by Accounting Dept., Southern Pacific Co.

San Francisco, Calif., March 14, 1927.

nu- which would accrue to these carriers if the $1.44 rate desired by the complainants in this case was ordered. The carriers named on Exhibit No. 205 are the principal short line connections of the transcontinental lines, defendants in this case, and they serve the deciduous fruit growing sections of the State north of Bakersfield.

Thereupon said exhibit was offered and admitted in evidence and marked Defendants' Exhibit No. 205 and is in the following form:

[fol. 735] EXHIBIT No. 205

R. A. Adams.

I. C. C. 19130

Net Income of the Following Short-line Railroads for Year 1926 and Loss in Freight Revenue if $1.44 Rate Applied on 1926 Deciduous Fruit Shipments, Other than Apples, Moving to Transcontinental Destinations; Also Net Income for the Year After Allowing for the Loss

Central California Traction Co., Modesto & Empire Traction Co., Northwestern Pacific R. R. Co., Petaluma & Santa Rosa R. R. Co., Sacramento Northern Railway Co., San Francisco & Sacramento R. R. Co., Tidewater Southern Ry. Co., Visalia Electric R. R. Co.

Railway Operating Revenues

Freight revenue (on deciduous fruits other than apples, moving to transcontinental destinations)		$670,214 07
All other freight revenue		6,502,346 89
All other revenue		4,143,243 15
Total Railway Operating Revenues		11,315,804 11
Total Railway Operating Expenses		8,486,845 97
Net Revenue		2,828,958 14
Railway Tax Accruals		739,200 41
Uncollectible Railway Revenues		1,281 03
Railway Operating Income		2,088,476 70
Equipment & Joint facility rents	Dr.	207,817 59
Net Railway Operating Income		1,880,659 11
Other Income		113,968 17
Total Gross Income		1,994,627 28
Income Deductions		1,848,857 31
Net Income		145,769 97
Loss in 1926 freight revenue if $1.44 rate applied on deciduous fruits, other than apples, moving in transcontinental destinations		114,179 27
Net Income after allowing for reduction in rate		31,590 70

Prepared by Accounting Dept., S. P. Co., San Francisco, Calif. March 24, 1927.

(Here follows Defendants' Exhibit No. 205a, marked side folio page 736)

[fol. 737] The document now shown to me, marked as Defendants' Exhibit No. 206, shows the property investment, book value and operating returns of the Southern Pacific Lines for the year 1907 to and including the year

[fol. 736]

EXHIBIT No. 205-A

Witness: R. Adams.

I. C. C. Docket No. 19130

Net Income of the Following Short Line Railroads, for Year 1926, and Loss in Freight Revenue if $1.44 Rate Applied on 1926 Deciduous Fruit Shipments, Other than Apples, Moving to Transcontinental Destinations, Also Net Income for the Year After Allowing for the Loss

Railway operating revenues	Central Calif. Traction Co.	Modesto & Empire Traction Co.	Sacramento Northern Railway Co.	Tidewater Southern Railway Co.	Petaluma & Sta. Rosa R. R. Co.	San Francisco Sacramento R. R. Co.	North-western Pacific R. R. Co.	Visalia Electric R. R. Co.	Total
Freight revenue (on deciduous fruits other than apples, moving to transcontinental destinations)	$118,294.88	$74,189.68	$45,958.00	$115,513.27	$11,135.83	$20,386.00	$237,295.85	$47,440.56	$670,214.07
All other freight revenue	203,265.31	92,347.01	946,864.65	177,504.55	521,499.80	289,662.82	4,133,191.66	138,011.09	6,502,346.89
All other revenue	168,966.62	5,508.58	576,659.52	23,012.19	46,483.40	680,263.12	2,638,859.78	3,489.94	4,143,243.15
Total Railway Oper. Revenues	490,526.81	172,045.27	1,569,482.17	316,030.01	579,119.03	990,311.94	7,009,347.29	188,941.59	11,315,804.11
Total Railway Oper. Expenses	440,444.00	99,325.72	1,181,297.11	198,372.58	426,257.89	909,782.35	5,135,979.45	95,386.87	8,486,845.97
Net Revenue	50,082.81	72,719.55	388,185.06	117,657.43	152,861.14	80,529.59	1,873,367.84	93,554.72	2,828,958.14
Railway Tax Accruals	30,049.27	10,047.90	81,824.02	24,306.17	34,394.70	53,144.00	490,369.88	15,014.47	739,200.41
Uncollectible Ry. Revenues							1,281.03		1,281.03
Railway Operating Income	20,033.54	62,671.65	306,361.04	93,351.26	118,466.44	27,385.59	1,381,716.93	78,490.25	2,088,476.70
Equipment & Joint facility rents		d 55,340.99				d	152,476.60	d	207,817.59
Net Railway Oper. Income	20,033.54	7,330.66	306,361.04	93,351.26	118,466.44	27,385.59	1,229,240.33	78,490.25	1,880,659.11
Other Income	14,219.17		44,302.08	5,407.80	4,585.90	1,145.56	42,906.74	1,400.92	113,968.17
Total Gross Income	34,252.17	7,330.66	350,663.12	98,759.06	123,052.34	28,531.15	1,272,147.07	79,891.17	1,994,627.28
Income Deductions	62,662.32	17,463.70	207,554.40	19,753.42	32,875.41	62,974.45	1,444,877.13	696.48	1,848,857.31
Net Income (or loss)	d 28,409.61	d 10,133.04	143,108.72	79,005.64	90,176.93	d 34,443.30	d 172,730.06	79,194.69	145,769.97
Loss in 1926 freight revenue if $1.44 rate applied on deciduous fruits, other than apples, moving to transcontinental destinations	20,289.14	12,434.19	7,703.00	20,239.34	1,866.37	3,424.84	39,993.54	8,228.85	114,179.27
Net Income (or loss) after allowing for reduction in rate	d 48,698.75	d 22,567.23	135,405.72	58,766.30	88,310.56	d 37,868.14	d 212,723.60	70,965.84	31,590.70

Prepared by Accounting Dept. S. P. Co., San Francisco, Calif., March 24, 1927.

d-Debit.

[fol. 738]

EXHIBIT No. 206

R. Adams

I. C. C. 19130

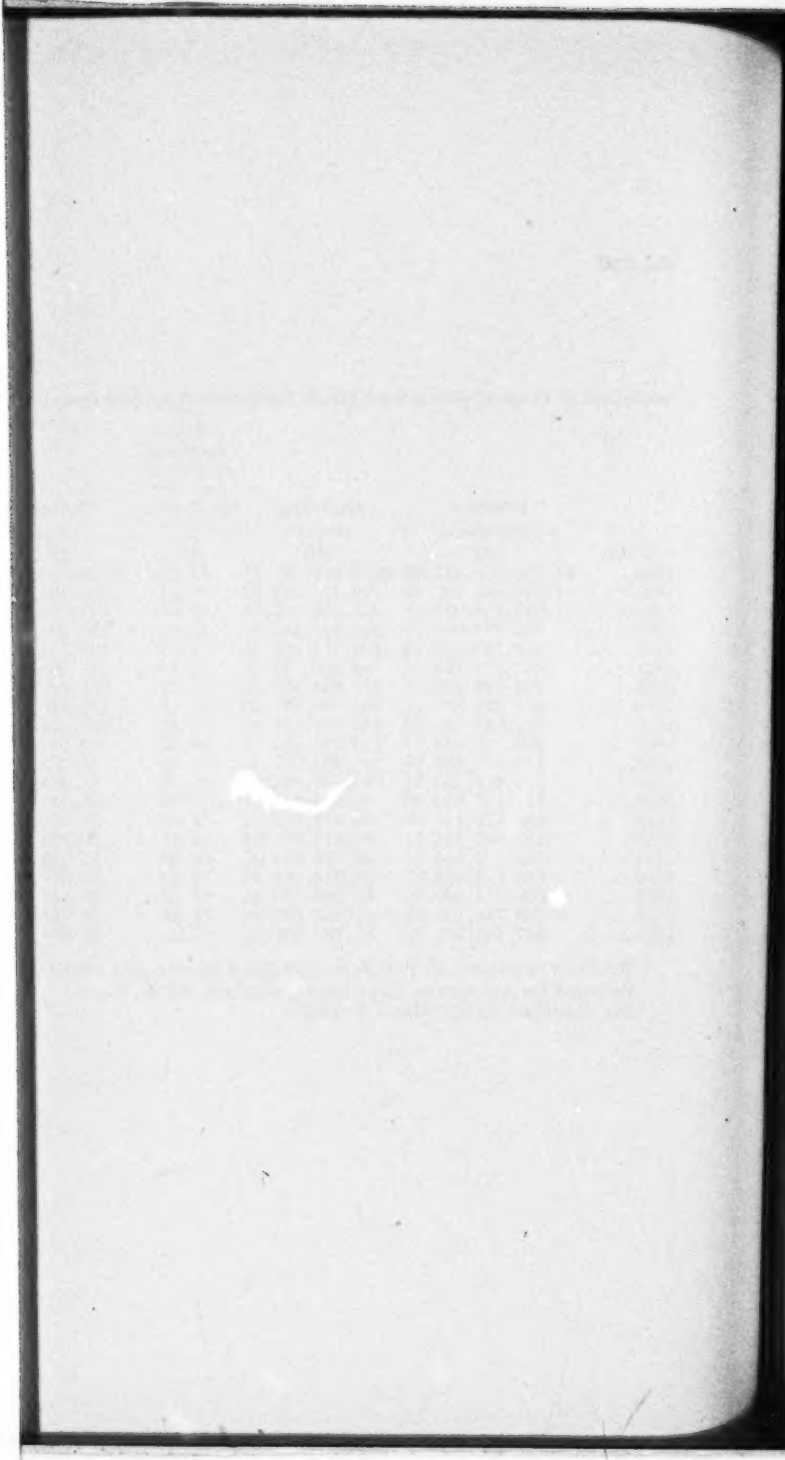
Southern Pacific Company—Pacific Lines

Statement of Property Investment (Book Value) and Operating Returns, Fiscal Years Ended June 30, 1907 to 1915, Inclusive, Calendar Years Ended December 31, 1916 to 1926, Inclusive

Year	Property investment (A)	Operating revenue (B)	Ratio operating revenue to property investment % (C)	Operating expenses (D)	Operating ratio % (E)	Net operating revenue (F)	Taxes (G)	Hire of equipment, joint facilities, etc. (H)	Net operating income (I)	Ratio of net operating income to property investment (J)	Year
1926.....	$1,153,939,416.06	$213,970,447.51	18.54	$146,417,881.24	68.43	$67,552,566.27	$17,572,296.42	$3,349,750.56 Dr.	$46,630,519.29	4.04	1926
1925.....	1,093,401,937.10	210,374,316.97	19.24	148,706,634.75	70.69	61,667,682.22	17,476,256.53	3,221,654.37 Dr.	40,969,771.32	3.75	1925
*1924....	1,040,804,971.28	205,850,971.81	19.78	144,845,776.96	70.36	61,005,194.85	17,402,390.87	2,680,278.22 Dr.	40,922,525.76	3.93	1924
1923.....	897,971,085.07	203,212,584.54	22.63	137,104,120.88	67.47	66,108,463.66	16,899,728.78	3,206,018.94 Dr.	46,002,715.94	5.12	1923
1922.....	850,749,666.14	183,675,379.95	21.59	127,774,263.27	69.57	55,901,116.68	15,480,342.16	1,351,578.25 Dr.	39,069,196.27	4.59	1922
1921.....	847,915,755.75	189,996,741.37	22.41	141,288,800.91	74.36	48,707,940.46	12,649,958.41	2,331,105.52 Dr.	33,726,876.53	3.98	1921
1920.....	824,735,425.26	201,894,192.65	24.48	162,796,069.40	80.63	39,098,123.25	11,474,045.18	1,060.479.19 Dr.	26,563,598.88	3.22	1920
1919.....	802,872,875.65	169,728,931.59	21.14	129,448,484.74	76.27	40,280,446.85	6,815,959.62	786,687.26 Dr.	32,677,799.97	4.07	1919
1918.....	791,751,221.88	153,948,641.25	19.44	113,652,897.90	73.83	40,295,743.35	7,127,320.10	848,363.96 Cr.	34,016,787.21	4.30	1918
1917.....	780,243,334.70	132,257,555.78	16.95	83,644,356.71	63.24	48,613,199.07	7,570,912.34	838,908.60 Cr.	41,881,195.33	5.37	1917
1916.....	765,637,890.93	111,404,393.10	14.55	68,063,393.59	61.10	43,340,999.51	5,519,951.01	421,225.55 Cr.	38,242,274.05	4.99	1916
1915.....	729,614,235.24	88,692,088.82	12.16	55,065,535.87	62.09	33,626,552.95	4,570,019.51	168,553.78 Cr.	29,225,087.22	4.00	1915
1914.....	717,577,020.30	95,048,813.91	13.25	58,112,438.10	61.14	36,936,375.81	5,260,872.23	328,515.37 Dr.	31,346,988.21	4.37	1914
1913.....	695,172,423.00	98,610,512.04	14.19	58,050,791.69	58.87	40,559,720.35	4,379,453.41	917,946.33 Dr.	35,262,320.61	5.07	1913
1912.....	673,643,524.71	94,410,059.34	14.01	55,930,875.64	59.24	38,479,183.70	4,309,576.45	859,380.39 Dr.	33,310,226.86	4.94	1912
1911.....	649,422,446.12	94,798,684.07	14.60	56,085,469.44	59.16	38,713,214.63	3,703,544.39	661,656.42 Dr.	34,348,013.82	5.29	1911
1910.....	626,712,754.07	99,014,004.55	15.80	56,574,425.32	57.14	42,439,579.23	3,437,532.03	812,236.76 Dr.	38,189,810.44	6.09	1910
1909.....	602,334,029.20	85,900,199.61	14.26	50,126,850.22	58.25	35,773,349.39	2,883,663.22	428,471.44 Dr.	32,461,214.73	5.39	1909
1908.....	588,748,100.59	87,487,689.69	14.86	56,331,922.19	64.39	31,155,767.50	2,684,955.04	985,321.13 Dr.	27,485,491.33	4.67	1908
1907.....	567,483,272.49	85,287,269.42	15.03	50,606,439.03	59.34	34,680,830.39	2,091,524.81	696,087.09 Dr.	31,893,218.49	5.62	1907

*Includes operations El Paso & Southwestern and Arizona Eastern companies for full year.

Prepared by Accounting Department, Southern Pacific Co.
San Francisco, Calif., March 5, 1927.



1926. This is taken from the records of the company. There is a substantial increase in the property investment of the Southern Pacific Company in the year 1924, up to and including the year 1926. This is due to the taking over of the El Paso & Southwestern and Arizona Eastern Companies by the Southern Pacific Company.

Said Exhibit was thereupon offered and admitted in evidence and marked Defendants' Exhibit No. 206 and is in the following form:

(Here follows Defendants' Exhibit No. 206, marked side folio page 738)

[fol. 739] Cross-examination:

The figure of property investment incorporated in Exhibits No. 204 and No. 206, are taken from the books of the companies named. They are actual book value figures. They have not been modified. These are the actual figures taken from the books for the accounts shown in the statement. The figures for the Southern Pacific Lines include the entire Southern Pacific System, but no water transportation. It does not include the Atlantic Steamship Company or the Mexican Lines.

The locomotive fuel oil prices for years prior to 1926 are as follows:

For the year ending June 30, 1915, 60¢; for the year 1916, 62¢; for the year ending December 31, 1916, 76¢; 1917, $1.14; 1918, $1.39; 1919, $1.54; 1920, $1.71; 1921, $1.79; 1922, $1.35; for the 10 months of 1923, $1.13.

A deduction of 2¢ per barrel for handling charges at fuel stations is deducted from these rates, and you will then have the purchase cost to the Southern Pacific Company. At page 10 of this exhibit is shown nothing for handling costs.

The Central California Traction Company, in the year 1926, sustained a loss of $28,409.61; the Modesto & Empire Traction Company, in 1926, sustained an operating deficit of $10,133.04. The Petaluma & Santa Rosa Railway Company, for the year 1926, earned a net railway operating income of $90,176.73.

The Northwestern Pacific Railroad Company is owned jointly by the Southern Pacific and the Santa Fe. I think that the Sacramento Northern Railway Company is controlled by the Western Pacific through stock ownership. The Visalia Electric Railroad Company is controlled by the Southern Pacific Company through stock ownership. It is an interurban electric road. The principal revenue of the San Francisco & Sacramento Railroad is from passenger traffic.

[fol. 740] Thereupon PAUL P. HASTINGS was called as a witness on behalf of the defendant and, having been duly sworn, testified as follows:

I am General Freight Agent of the Atchison, Topeka & Santa Fe Railway at San Francisco. For the last twenty years I have been a freight traffic officer in charge of rate making. For two years I was Assistant to the Director of Traffic, United States Railroad Administration. I had charge of the rate department in all lines under Federal control.

Originally traffic between California and the Atlantic seaboard moved by steamship around Cape Horn and later through the straits of Magellan. After the commencement of the transcontinental railroad traffic there was steamship traffic through the straits of Magellan, and then the operation of steamships in connection with the Nicaraguan route overland.

In 1914 the Panama Canal was opened. There was no substantial competition with the railroads until 1920, due to the war conditions. Prior to March 15, 1918, the transcontinental railroads prescribed lower rates to Pacific Coast terminals from the east, and in some respects in the reverse direction, than were applied to the intermediate territory in the west. This was due to water competition which varied during the period prior to that time, but was always present.

The canal lines reentered the intercoastal service in 1920 and their business increased rapidly until it reached the present proportions, particularly on the westbound traffic, in 1922. Under these conditions the railroads were faced

[fol. 741] with losing almost their entire westbound traffic between the Atlantic and Pacific Coast, or make material reductions in rates. Since 1920 we have endeavored to reduce all rates which would increase not only our volume of traffic, but our net earnings on the traffic carried, compared with what we were getting. In some instances we have held the commodities fairly well by these reductions.

On a number of our principal commodities, most of them named in Mr. Remington's Exhibit No. 32, we have made reductions on eastbound business on account of Canal competition. The result of this situation has been to make the transcontinental lines increase one-way carriers of perishable traffic and has increased their cost in carrying that perishable traffic.

I have prepared an exhibit showing the movement via the Canal routes.

Said exhibit was thereupon offered and admitted in evidence as Defendants' Exhibit No. 207, and is in the following form:

[fol. 742]

EXHIBIT No. 207

Witness: Hastings

I. C. C. Docket 19130

United States Water-borne Intercoastal Traffic, Calendar Years 1924 and 1925
(Compiled from Report D. S. 317 of the U. S. Shipping Board, Bureau of Research, Division of Statistics)

N. B.—In Cargo Tons of 2,240 lbs.

Westbound

From	To		California	Oregon	Washington	Total
No. Atlantic		1924	1,491,501	159,924	219,263	1,870,688
		1925	1,453,210	158,094	243,026	1,854,330
So. Atlantic		1924	10,868	2,317	1,399	14,584
		1925	48,516	3,842	7,102	59,460
Gulf		1924	237,879	38,292	34,313	310,484
		1925	231,883	42,783	42,135	316,801
Totals		1924	1,740,248	200,533	254,975	2,195,756
		1925	1,733,609	204,719	292,263	2,230,591

Eastbound

From	To		North Atlantic	South Atlantic	Gulf	Total
California		1924	5,836,681	57,276	219,214	6,113,171
Less petroleum products			5,170,340	39,094	167,291	5,376,725
			666,341	18,182	51,923	736,446
California		1925	3,705,159	150,516	333,795	4,189,470
Less petroleum products			3,041,983	132,969	270,193	3,445,145
			663,176	17,547	63,602	744,325
[fol. 743]						
Oregon		1924	372,938	2,808	14,202	389,948
Less lumber			262,067	714	6,672	269,453
			110,871	2,094	7,530	120,495
Oregon		1925	428,981	14,912	19,185	463,078
Less lumber			308,161	12,403	10,747	331,311
			120,820	2,509	8,438	131,767
Washington		1924	1,298,312	27,645	54,721	1,380,678
Less lumber			1,097,907	15,944	27,785	1,141,636
			200,405	11,701	26,936	239,042
Washington		1925	1,585,643	72,199	60,225	1,718,067
Less lumber			1,062,005	43,546	28,516	1,134,067
			523,638	28,653	31,709	584,000
Total		1924	7,507,931	87,729	288,137	7,883,797
Less petroleum prods. & lumber			6,530,314	55,752	201,748	6,787,814
			977,617	31,977	86,389	1,095,983
Total		1925	5,719,783	237,627	413,205	6,370,615
Less petroleum prods. & lumber			4,412,149	188,918	309,456	4,910,523
			1,307,634	48,709	103,749	1,460,092

[fol. 744] In Mr. Remington's Exhibit No. 32, he has not included all of our rates that have been reduced, but I believe he has presented an exhibit which shows a very fair cross-section of our traffic in the eastbound business.

The items on Exhibit No. 32, which are described as beans, minimum weight 60,000 pounds; canned goods, minimum weight, 60,000 pounds; fruit, dried, in boxes, minimum 60,000; fruit, dried, in sacks, minimum 60,000 pounds; nuts, edible; nuts, kernels; salmon, canned; arsenic, borax, et-cetera, minimum 80,000; clay, Fuller's earth, talc; hides,

green—all show that our present rates are considerably below the result of the general advance. Those are some of our heaviest eastbound commodities, other than perishables.

Those reductions were made solely on account of Canal competition, which I have described. On the item of honey the reduction was made also because of the Canal competition; but partly also to meet the competition of eastern production.

On the items covering junk and papers (waste and scrap) the reduction was on account of the Canal competition; but these are among the items I referred to when I said that some of these reductions had been made to enable us to haul traffic to the east, the middle west or Chicago market, for example, which would otherwise have moved by the Canal to the Atlantic seaboard.

The reductions on hops, on olives, on eggs, on glycerine, and on rice, with a minimum of 60,000 and 80,000 pounds, were also made to meet Canal competition. The reduction on barley was to move business for export via the Gulf ports and was made to meet the direct sailings from Cali- [fol. 745] fornia ports to foreign ports, as well as the competition of the Canal vessels.

The reductions on the item durra, and in the same item, seterita and cafircorn, on poultry feed and on mustard seed, is due indirectly there to the Commission's decision in Docket 12929, covering grain rates, because those commodities are related to the grain rates. I might say, out of that item covering cafircorn, and so forth, I know of no movement eastbound—and very little of the others, too.

There are a number of items here, which, for the want of a better term, I will say cover reductions in rates to meet market conditions—market competition—and by that I mean to enable us to haul from the Pacific Coast, California, some commodity which met with active competition from similar products produced usually in much greater quantity in or nearer the destination territory. Those items are asphalt, vinegar, and vinegar stock, hay, tightly compressed, alfalfa (meal), animal manure, pumice (unground), roofing and roofing material, stone, marble, and paper

(wrapping and plain); the reductions on the roofing and paper were only to Group F or the Missouri River and west where these commodities met with heavy competition from producers around that territory or such points as Chicago and Wisconsin.

The oil, cocoanut, (crude) was reduced because that commodity comes from the Philippine Islands, and moves both from the Atlantic and Gulf ports to the markets in the central and midwestern states, and with our reduction we have been steadily losing ground in hauling that commodity from the Pacific Coast, although we have retained a considerable tonnage.

[fol. 746] Now, the remaining items on Exhibit 32 cover commodities on which the reduction, below the general advance, was made on account of the importation of foreign goods.

The item, third from the bottom of page 1, reading, oils, beans, cocoanuts, etcetera, shows a very considerable reduction. That was where a class rate was reduced to move some traffic consisting of oils produced by crushers on the Pacific Coast who were making the oils out of imported soya beans and copra.

The next item below that, shown as oil, cocoanut (crude), covers the importation of crude cocoanut oils which are pressed in the Philippine Islands and come to this country as oils—that is, imported traffic, as oils.

The next item on the second page covering molasses is for the handling of black strap or refuse molasses coming from the Hawaiian Islands, coming through California ports to retain the market in the middle western states where it is used in stock foods in competition with similar molasses imported in large quantities from Cuba through the Gulf ports to these same markets.

The item covering "soda, nitrate of," is also one covered where importations via the Pacific Coast met with competition from the Atlantic and Gulf Ports. The same is true of "coffee, green"; that rate being published as a domestic rate, to permit the occasional shipment of cars of coffee which come in here but are not handled as through consignments to the east. They are necessarily imported, because we grow none of those things I have mentioned under this heading here in California.

The magnesite shown on page 2 is of California pro-
[fol. 747] duction and the low rate was made on that to enable the California producers to meet the competition in the Central States of magnesite imported through Atlantic or Gulf ports from Greece.

On Mr. Remington's Exhibit No. 33, he has stated a fair cross-section of transcontinental westbound traffic and compares rates in effect on March 1, 1927, with those in effect on June 24, 1918. On this exhibit there has been shown comparatively few of the rates that have not been reduced. We have quite a number of them in the tariff, but such rates do not move a great deal of traffic. The last item on the exhibit, namely, automobiles, passenger, which shows the general advance, is the only commodity moving in heavy volume westbound which is not subject to severe canal competition.

I make this exception; from the bottom, the 3rd item, on sheet 2, shows an advance considerably above the general advance.

In this exhibit there are but six items where the rates show the general advance. They are dried beans, dry goods, shafting, plain, boiler ends, sulphur and passenger automobiles. With the exception of these items, all of the rates shown as in effect on March 1, 1927, were made to meet the Canal competition.

Cross-examination:

The lumber movement from the Pacific Coast represents a substantial part of the transcontinental tonnage to the transcontinental carriers, and the Southern Pacific Company carries a heavy lumber tonnage to the east, although not as heavy as some of the northern lines. Lumber rates
[fol. 748] have increased by 23% since June 4, 1918. The reason that lumber rates have not increased as much as other rates is due to the fact that on June 25, 1918, when the railroads were under Government control, the advance
[fol. 749] in rates was restricted because of the fact that lumber was used in building materials and war supplies, and because of competition in shorter hauls in the eastern territory. The reason for the difference in the relative advance of the lumber and deciduous fruit rates over the

pre-war rates is purely a historical one. The reason for the present adjustment of the petroleum rate is analogous to the reason which I have offered with respect to lumber.

Distance is a factor in ton mile earnings. With increased distance I would expect the earnings per net ton mile to decline somewhat, to whatever extent the terminal expense fades out of the rate. When we are addressing ourselves to the determination of the propriety of certain long haul rates, and we resort to short haul rates upon the same commodity, over the same lines, and under substantially similar transportation conditions, we must find some means of extending this short haul rate for the longer distance in order to have a proper basis of comparison.

A. L. CONRAD was thereupon called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

I am assistant General Auditor of the Atchison, Topeka & Santa Fe Railway Company. I have had 44 years in railroad experience, commencing as a telegraph operator, station agent, auditor of smaller railroads, traffic manager of smaller railroads, auditor of disbursements of the Santa Fe, and asistant general auditor.

My duties have been largely the supervision of statistics and cost accounting and the making of cost studies. I have prepared a statement which shows the westbound loaded and empty refrigerator car movement of the fruit and vegetable carrying classes received from connecting eastern lines in interchange by the Atchison, Topeka & Santa Fe Railway for the year 1926. This is the statement now shown to me.

[fol. 750] Said statement was thereupon offered and admitted in evidence and marked as Defendant's Exhibit No. 209, and is in the following form:

[fol. 751]

EXHIBIT 209

[1] The Atchison, Topeka and Santa Fe Railway Company

[1] Statement of Westbound Loaded and Empty Refrigerator Cars of the Fruit and Vegetable Carrying Classes Received from Connecting Eastern Lines in Interchange in the Year 1926

	Chicago District				Kansas City District				Total Chicago and Kansas City Districts			
Month received (1)	No. loaded (2)	No. empty (3)	Total (4)	Per cent empty (5)	No. loaded (6)	No. empty (7)	Total (8)	Per cent empty (9)	No. loaded (10)	No. empty (11)	Total (12)	Per cent empty (13)
January	157	2.000	2.157	92.72	303	307	610	50.33	460	2.307	2.767	83.38
February	150	1.556	1.706	91.21	330	231	561	41.18	480	1.787	2.267	78.83
March	172	1,682	1,854	90.72	222	211	433	48.73	394	1,893	2,287	82.77
April	141	2,276	2.417	94.17	134	237	371	63.88	275	2.513	2.788	90.14
May	147	2,128	2,275	93.54	26	222	248	89.52	173	2.350	2.523	93.14
June	103	1,565	1,668	93.83	194	194	388	50.00	297	1,759	2,056	85.55
July	111	3,832	3,943	97.18	213	239	452	52.88	324	4,071	4,395	92.63
August	129	4,291	4,420	97.08	223	389	612	63.56	352	4,680	5,032	93.00
September	172	1,648	1,820	90.55	299	445	744	59.81	471	2,093	2,564	81.63
October	172	4,351	4,523	96.20	562	415	977	42.48	734	4,766	5,500	86.65
November	174	4,416	4,590	96.21	257	190	447	42.51	431	4,606	5,037	91.44
December	201	4,349	4,550	95.58	133	291	424	68.63	334	4.640	4,974	93.29
Total year	1,829	34,094	35,923	94.91	2,896	3,371	6,267	53.79	4,725	37,465	42,190	88.80

[1] Chicago Statistical Department, March 2, 1927.

[fol. 752] In the year 1922 on the lines of the Atchison, Topeka and Santa Fe Railroad west of Albuquerque and Belen, the percentage of empty to total westbound cars was as follows: In 1922, 61.87 per cent; in 1923, 70.34 per cent; in 1925, 76.56 per cent; and in 1926, 76.0 per cent.

During these years in the months of September, October and November, the average was 81.5 per cent.

Thereupon there was offered and admitted in evidence Defendants' Exhibit No. 210, which is in the following form:

[fol. 753] EXHIBIT No. 210

Witness: Conrad

The Atchison, Topeka and Santa Fe Railway—Coast Lines

Statement Showing Westbound Loaded and Empty S. F. R. D. Car Mileage on Lines West of Albuquerque and Belen, Calendars Years 1922, 1923, 1925, and 1926

Month (1)	1922 Loaded (2)	Empty (3)	Total (4)	Per cent empty of Total (5)
January	985,889	1,305,272	2,291,161	56.97
February	1,062,926	903,472	1,966,398	45.95
March	1,283,506	1,614,468	2,897,974	55.71
April	1,306,977	1,419,305	2,726,282	52.06
May	1,375,347	1,276,719	2,652,066	48.14
June	1,297,860	1,263,022	2,560,882	49.32
July	1,386,304	1,652,454	3,038,758	54.38
August	1,382,765	1,492,770	2,875,535	51.91
September	1,376,030	2,995,547	4,371,577	68.52
October	1,108,526	4,950,886	6,059,412	81.71
November	1,611,208	3,699,316	5,310,524	69.66
December	1,448,257	2,776,775	4,225,032	65.72
Total year	15,625,595	25,350,006	40,975,601	61.87

[fol. 754]

Month	1923 Loaded (6)	Empty (7)	Total (8)	Per cent empty of Total (9)
January	1,272,118	2,668,219	3,940,337	67.72
February	1,192,688	1,267,646	2,460,334	51.52
March	1,449,515	2,357,987	3,807,502	61.93
April	1,539,299	2,885,867	4,425,166	65.21
May	1,577,220	2,547,598	4,124,818	61.76
June	1,551,799	2,764,456	4,316,255	64.05
July	1,542,702	2,337,725	3,880,427	60.24
August	1,386,785	2,839,744	4,226,529	67.19
September	1,366,284	4,709,118	6,075,402	77.51
October	1,269,972	7,275,952	8,545,924	85.14
November	1,424,011	5,735,326	7,159,337	80.11
December	1,308,337	2,649,006	3,957,343	66.94
Total year	16,880,730	40,038,644	56,919,374	70.34

[fol. 755]

1925

Month	Loaded (10)	Empty (11)	Total (12)	Per cent empty of Total (13)
January	1,097,766	1,859,538	2,957,304	62.88
February	1,006,689	886,201	1,892,890	46.82
March	1,212,762	1,938,980	3,151,742	61.52
April	1,167,541	2,194,723	3,362,264	65.28
May	1,218,829	1,906,596	3,125,425	61.00
June	1,084,641	1,799,250	2,883,891	62.39
July	1,273,591	4,072,368	5,345,959	76.18
August	1,181,503	3,778,560	4,952,063	76.14
September	1,244,551	6,563,356	7,807,907	84.06
October	1,016,862	10,281,607	11,298,469	91.00
November	1,075,717	5,672,549	6,748,266	84.06
December	1,036,467	3,521,966	4,558,433	77.26
Total year	13,616,919	44,467,694	58,084,613	76.56

[fol. 756]

1926

Month	Loaded (14)	Empty (15)	Total (16)	Per cent empty of total (17)
January	1,074,734	3,554,692	4,629,426	76.78
February	996,016	2,687,490	3,683,506	72.96
March	1,131,597	2,432,674	3,564,271	68.25
April	1,235,685	3,172,862	4,408,647	71.97
May	1,204,255	2,662,367	3,866,622	68.86
June	1,058,833	2,335,708	3,394,541	68.81
July	1,357,803	3,409,460	4,767,263	71.52
August	1,308,980	5,580,704	6,889,684	81.00
September	1,388,178	5,200,231	6,588,409	78.93
October	1,203,911	6,407,575	7,611,486	84.18
November	1,275,393	3,226,234	4,501,627	71.67
December	1,160,507	4,909,423	6,069,930	80.88
Total year	14,395,992	45,579,420	59,975,412	76.00

Chicago Statistical Department, March 2, 1927.

[fol. 757] I have prepared a statement of the S. F. R. D. Refrigerator car mileage, segregated between loaded and empty cars in the years indicated. That is the statement now shown to me.

Said statement was thereupon offered and admitted in evidence and marked as Defendants' Exhibit No. 211 and is in the following form:

[fol. 758]

EXHIBIT No. 211
Witness: Hastings
Docket No. 19130

The Atchison, Topeka and Santa Fe Railway Company—Coast Lines
Statement of S. F. R. D. Refrigerator Car Mileage Secregated Between Loaded and Empty in Selected Years Indicated

Year	Loaded mileage	Empty mileage	Ratio of empty to loaded
1917	52,485,356	23,865,689	45.5
1922	54,224,220	26,329,551	48.6
1923	70,018,795	41,544,149	59.3
1924	67,144,500	39,928,548	59.6
1925	71,512,955	45,594,314	63.8
1926	70,489,181	48,581,287	66.1

[fol. 759] The document now shown to me, marked as Defendants' Exhibit No. 212, shows the percentage of loaded to total car miles as between refrigerator cars and other cars, and also the percentage of all freight cars moving over the Atchison, Topeka & Santa Fe Railway Company during the years 1924, 1925 and 1926.

Said exhibit was thereupon offered and admitted in evidence and marked as Defendants' Exhibit No. 212 and is in the following form:

[fol. 760]

EXHIBIT No. 212

Witness: Hastings

Docket No. 19130

Atchison, Topeka and Santa Fe Railway Company—Coast Lines

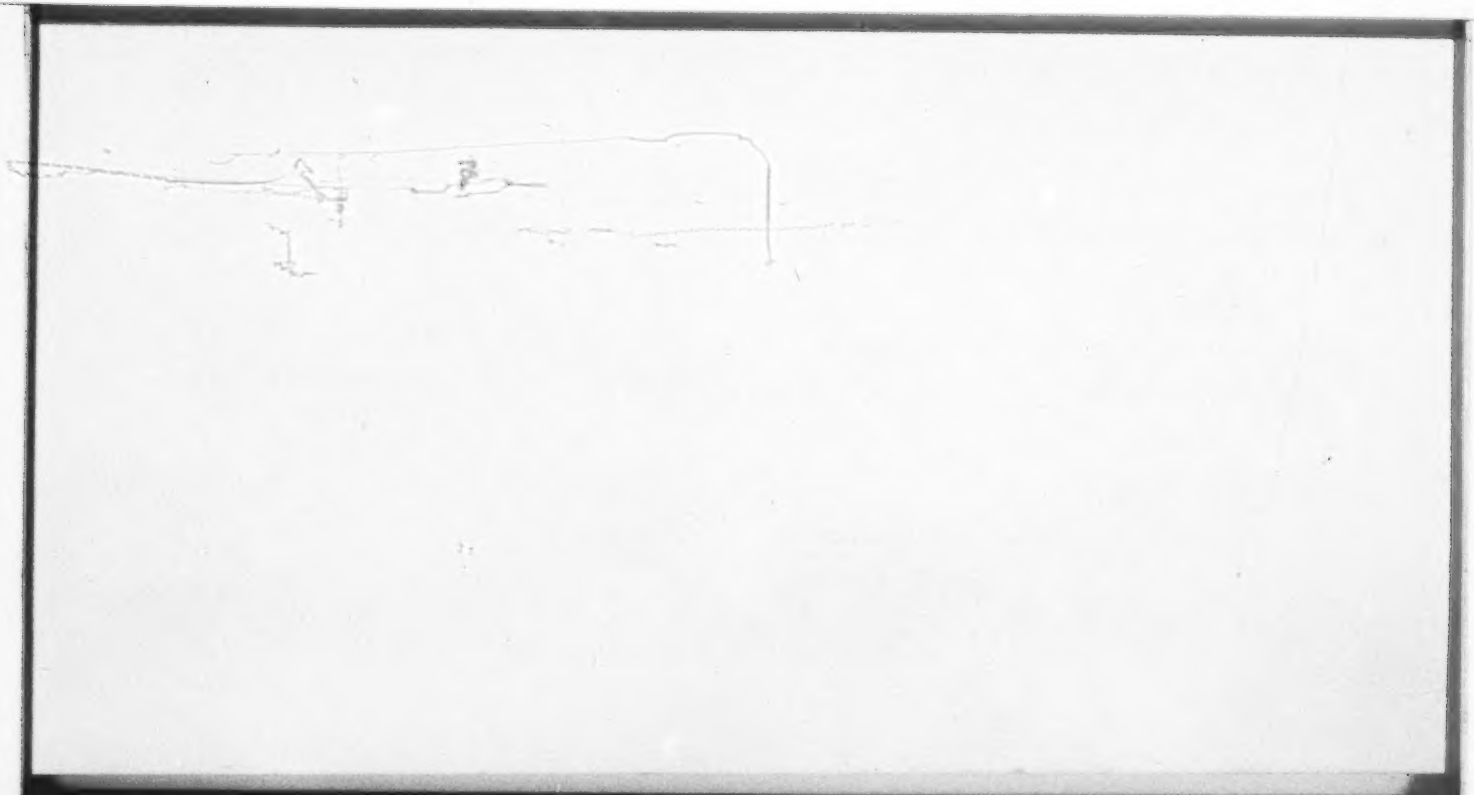
Statement of Car-mile Ratios, Years 1924, 1925, and 1926
Percentage of Loaded to Total Car Miles

Year	Refrigerator cars	Other cars	All freight cars
1924	62.7	68.3	65.9
1925	61.7	69.5	65.8
1926	60.2	69.6	65.5
Total average of three years	61.3	69.2	65.7

Percentage of Empty to Loaded Car Miles

Year	Refrigerator cars	Other cars	All freight cars
1924	59.6	46.4	51.8
1925	63.7	43.8	52.0
1926	66.1	43.5	52.7
Total average of three years	63.2	44.5	52.2

[fol. 761] The exhibit now shown to me, marked as Defendants' Exhibit No. 213, shows the number of tons of revenue freight handled in the years ending December 31, 1924, 1925 and 1926, on the Atchison, Topeka & Santa Fe Railway. This tonnage is segregated between principal commodities. "Other fresh fruit" as the term is used in this exhibit, does not include citrus fruit. That includes deciduous fruit and also other fruit not commonly so designated. Apples are included in the heading "deciduous and other fresh fruit." It is also our melons, cherries and strawberries.



The Atchison Topeka and Santa Fe Railway Company

Number of Tons of Revenue Freight Handled, Years Ended December 31, 1924, 1925, and 1926

Number of Tons of Revenue Freight Handled

Period (1)	Live stock (Com. Nos. 17 18, 19 & 20) (2)	Grain and grain products (Com. Nos. 1 to 8 incl.) (3)	Citrus fruit (Com. No. 11) (4)	Deciduous and other fresh fruit (Com. No. 12) (5)	Potatoes and other fresh vegetables (Com. Nos. 13 & 14) (6)	Lumber (Com. No. 43) (7)	Oil (Com. Nos. 36 & 45 (8)	Coal Com. Nos. 29 & 30 (9)	All other freight (10)	Total all freight (11)	% of deciduous and other fresh fruit to total tonnage (12)
1926, January	70,454	265,739	26,160	4,933	45,679	79,543	499,698	360,500	1,290,588	2,643,294	.00187
February	59,408	234,605	32,880	3,660	28,400	96,188	444,698	291,811	1,196,661	2,338,311	.00153
March	69,530	200,755	46,222	3,655	22,837	104,191	556,490	236,770	1,570,715	2,811,165	.00130
April	103,199	182,618	57,278	3,068	34,752	105,014	486,888	237,002	1,416,941	2,626,760	00117
May	87,097	204,731	59,128	2,712	21,180	103,496	514,949	194,791	1,615,728	2,803,812	.00097
June	58,962	247,992	60,786	10,200	26,150	108,145	578,636	204,999	1,699,691	2,995,561	.00341
Total 1st 6 mos	448,650	1,336,440	282,454	28,228	178,998	596,577	3,081,359	1,525,873	8,790,324	16,268,903	.00173
1926, July	60,879	989,173	48,664	66,965	30,318	107,340	624,395	213,093	1,738,701	3,879,528	.01726
August	83,712	883,699	47,595	82,459	40,973	122,749	687,807	245,570	1,790,893	3,985,457	.02069
September	124,875	469,920	31,904	134,470	29,177	113,616	708,607	299,736	1,675,276	3,587,581	.03748
October	154,470	406,643	34,817	165,407	36,774	107,151	698,111	376,872	1,821,081	3,801,326	.04351
November	147,535	410,630	25,944	85,315	36,575	110,090	717,571	425,851	1,774,375	3,733,886	.02285
December	91,737	372,928	35,202	17,300	44,672	98,348	774,639	426,901	1,479,205	3,340,932	.00518
Total last 6 mos	663,208	3,532,993	224,126	551,916	218,489	659,294	4,211,130	1,988,023	10,279,531	22,328,710	.02472
Excess in last 6 mos. over 1st 6 mos	214,558	2,196,553	58,328	523,688	39,491	62,717	1,129,771	462,150	1,489,207	6,059,807	.08642
1925, January	97,403	362,046	25,105	3,014	41,783	88,187	554,733	432,282	1,155,380	2,749,933	.00110
February	73,560	327,952	26,203	2,718	33,467	94,798	486,449	299,812	1,146,789	2,491,748	.00109
March	81,696	267,570	39,923	3,229	29,910	104,759	530,424	202,197	1,358,424	2,618,132	.00123
April	140,408	194,693	45,727	2,010	25,290	102,344	523,642	156,361	1,304,581	2,495,056	.00081
May	90,744	205,077	43,651	2,770	25,332	101,920	554,849	181,437	1,429,231	2,635,011	.00105
June	69,388	289,682	43,828	7,626	14,920	94,919	601,455	190,795	1,539,279	2,851,842	.00267
Total 1st 6 mos	553,149	1,647,020	224,437	21,367	170,702	586,927	3,241,552	1,463,884	7,933,684	15,841,722	.00135
1925, July	109,893	481,874	32,137	55,672	27,535	100,355	658,317	212,597	1,553,451	3,231,831	.01723
August	104,165	364,886	22,754	72,955	27,194	101,839	620,699	258,388	1,589,259	3,162,139	.02307
September	120,565	252,265	18,731	129,557	30,774	107,706	616,426	312,509	1,633,320	3,221,843	.04021
October	172,578	223,688	16,786	218,515	42,422	110,418	599,566	391,052	1,761,582	3,536,607	.06179
November	137,719	255,328	12,780	121,994	34,475	103,222	556,646	404,931	1,719,229	3,346,324	.03645
December	90,014	342,583	30,401	16,252	41,711	100,124	556,960	410,005	1,709,023	3,297,073	.00493
Total last 6 mos	734,934	1,920,614	133,589	614,945	204,111	623,664	3,608,614	1,989,482	9,965,864	19,795,817	.03106
Excess in last 6 mos. over 1st 6 mos	181,785	273,594	90,848	593,578	33,499	36,737	367,062	526,598	2,032,180	3,954,095	.15012
1924, January	82,077	263,760	26,352	5,264	37,713	83,603	447,848	381,620	1,060,285	2,388,522	.00220
February	56,983	321,013	37,300	5,671	31,199	93,110	399,323	277,843	1,063,157	2,285,599	.00248
March	55,587	268,947	48,680	4,313	28,379	111,898	366,901	274,346	1,293,671	2,452,722	.00176
April	100,194	207,554	50,281	3,020	27,965	101,918	419,877	197,123	1,227,637	2,335,569	.00129
May	96,551	223,923	61,103	2,698	24,591	104,112	445,618	172,755	1,403,760	2,535,111	.00106
June	66,822	207,045	59,589	6,167	14,753	93,350	432,738	179,480	1,335,405	2,395,349	.00257
Total 1st 6 mos	458,214	1,492,242	283,305	27,133	164,600	587,991	2,512,305	1,483,167	7,383,915	14,392,872	.00188
1924, July	67,778	464,390	47,586	47,354	27,814	88,479	515,997	207,410	1,358,662	2,825,470	.01657
August	97,935	760,729	32,258	63,062	28,749	88,459	506,932	218,195	1,358,372	3,154,691	.01999
September	154,055	606,398	28,928	131,853	34,041	103,126	567,860	331,301	1,597,783	3,555,345	.03709
October	203,935	500,173	27,767	144,412	38,871	101,500	516,208	383,113	1,687,685	3,603,664	.04007
November	154,340	461,179	23,177	64,565	39,575	96,926	487,413	342,719	1,432,766	3,102,660	.02081
December	117,142	470,094	29,017	10,824	41,321	101,748	525,185	362,038	1,339,503	2,996,872	.00361
Total last 6 mos	795,185	3,262,963	188,733	462,070	210,371	580,238	3,119,595	1,844,776	8,774,771	19,238,702	.02402
Excess in last 6 mos. over 1st 6 mos	336,971	1,770,721	Recess 94,572	434,937	45,771	Recess 7,753	607,290	361,609	1,390,856	4,845,830	.08975

[fol. 764]

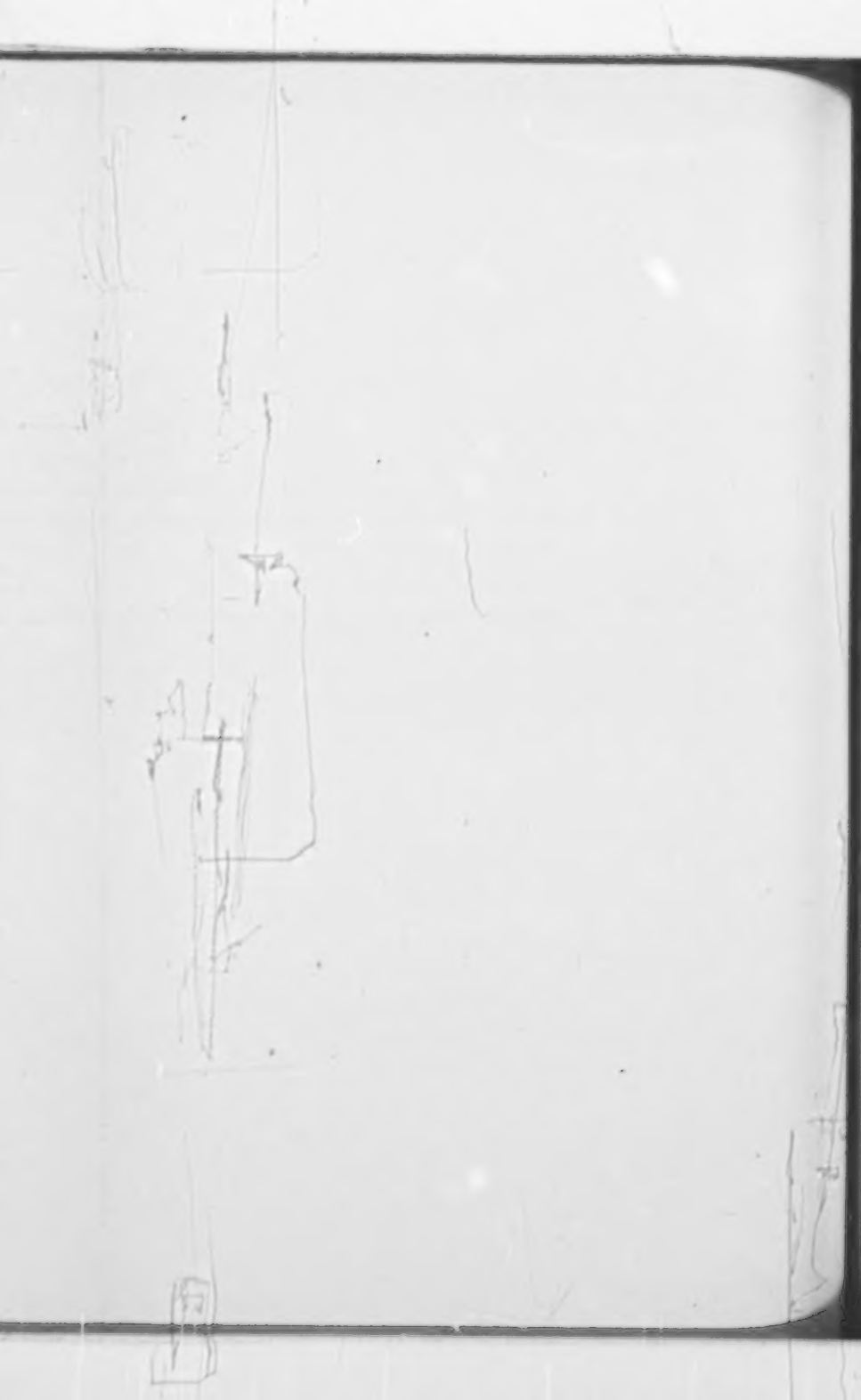
EXHIBIT No. 214

Witness: Conrad

The Atchison, Topeka and Santa Fe Railway Company

Tonnage of Other Fresh Fruits, Total All Freight, and Total All Freight, Excluding Other Fresh Fruits, by Months for the Calendar Year 1926

	January	February	March	April	May	June	July	August	September	October	November	December
Tons, Total all Traffic.....	2,643,294	2,388,311	2,811,165	2,626,760	2,803,812	2,995,561	3,879,528	3,985,457	3,587,581	3,801,326	3,733,886	3,340,932
Tons, Other Fresh Fruits.....	4,933	3,660	3,655	3,068	2,712	10,200	66,965	82,459	134,470	165,407	85,314	17,300
Tons, All Traff. Exc. Other Fr. Fruits.....	2,638,361	2,384,651	2,807,510	2,623,692	2,801,100	2,985,361	3,812,563	3,902,998	3,453,111	3,635,919	3,648,572	3,323,632



Thereupon said Exhibit was offered and admitted in evidence and marked as Defendants' Exhibit No. 213 and is in the following form:

(Here follows Exhibit No. 213, marked side folio page 762)

[fol. 763] The document now shown to me, marked as Defendants' Exhibit No. 214, is a graphical statement showing the tonnage handled by months in the year 1926. The upper solid line represents all freight tonnage. The upper broken line represents all freight tonnage with deciduous and other fresh fruit excluded. Regardless of other fresh fruit, peaks are quite appreciable during July, August, September and October, as compared with the first six months of the year.

Thereupon said Exhibit No. 214 was offered and admitted in evidence and is in the following form:

(Here follows Exhibit No. 214, marked side folio page 764)

[fol. 765] The document now shown to me marked for identification as Defendants' Exhibit No. 216 is a statement of revenues, expenses and taxes, and ratios to revenues of expenses, taxes, and of expenses and taxes combined during the year 1926, and comparison of recorded totals for selected months with restatement of expenses and taxes for those months to ratably carry into months of heavy traffic, expenditures on behalf thereof, during lighter traffic months.

In making up this exhibit, the maintenance of way and structure expense, and the maintenance of equipment expenses as recorded in the various months were restated and apportioned to the individual months on the basis of the ratio of the annual traffic handled in that month as represented by gross ton miles. The same thing was done with the traffic expenses and the general expenses and certain items of transportation expenses, such as superintendence and casualties, all of these items were restated on the basis of maintenance of way and structure expenses. The other expenses, such as train dispatching, station service, yard service, train service, and miscellaneous accounts were assigned to the months on the actual basis in which the expenses were recorded.

After making this adjustment there was still a fluctuation in the operating ratios in the various months, and it was thought to be more informative if we grouped the eight months expenses as reconstructed, in which there was very little deciduous fruit movement, and compared them with the four months in which the bulk of the deciduous fruit moved.

[fol. 766] Thereupon said statement was offered and admitted in evidence and marked Defendants' Exhibit No. 216 and is in the following form:

(Here follows Defendants' Exhibit No. 216, marked side folio page 767)

[fol. 768] During the months when the deciduous fruit traffic is moving, traffic is very much unbalanced. This increases the cost of operation. Notwithstanding the increased tonnage moving during these months, the unbalanced traffic conditions has the effect of nullifying the benefits that might be received from increased traffic.

Cross-examination:

Referring to Exhibit No. 212, it is shown there that taking the three year period the percentage of loaded to total car mileage in the case of refrigerator cars is 61.3, and other cars, 69.2.

There was a- increase in traffic density on the Atchison, Topeka & Santa Fe Railway between 1914 and 1917 of approximately 50 per cent.

[fol. 769] Thereupon, L. N. Bradshaw was called as a witness on behalf of the Defendants, and having been duly sworn, tetstified as follows:

I am Chief Commerce Clerk for the Southern Pacific Company at San Francisco. I have had thirteen years' railroad experience in the traffic department.

The document now shown to me, marked for identification as Defendants' Exhibit No. 222, is self-explanatory. It shows the farm values and relative purchasing power of

[fol. 767]

EXHIBIT No. 216

The Atchison, Topeka and Santa Fe Ry. Co. and Panhandle and Santa Fe Ry. Co.

Statement of Revenues, Expenses, and Taxes, also Ratios to Revenues of Expenses, Taxes, and of Expenses and Taxes Combined, During the Year 1926, and Comparison of Recorded Totals for Selected Months, with Re-statement of Expenses and Taxes for Those Months to Ratably Carry Into Months of Heavy Traffic Expenditures on Behalf Thereof During Lighter Traffic Months

Item	Year 1926, total	Eight months, January to July and December		Four months, August to November	
		Recorded	Restated	Recorded	Restated
Railway Operating Revenues	$225,572,767.16	$13,076,537.34	$138,076,537.34	$87,496,229.82	$87,496,229.82
Railway Operating Expenses:					
I. Maintenance of Way and Structures	29,062,182.73	1,955,296.94	17,199,435.67	9,106,885.79	11,862,747.06
II. Maintenance of Equipment	41,323,568.03	2,982,985.43	24,449,322.61	14,340,582.60	16,874,245.42
III. Traffic	4,546,277.56	3,010,178.35	2,690,555.26	1,536,099.21	1,855,722.30
IV. Transportation—Rail Line	66,194,688.08	43,061,062.25	42,595,246.68	23,133,625.83	23,599,441.40
VI. Miscellaneous Operations	112,313.70	73,989.43	73,989.43	38,324.27	38,324.27
VII. General	4,716,444.51	3,154,903.49	2,794,267.26	1,561,541.02	1,922,177.25
VIII. Transpn. for Inv.–Cr	Cr. 935,993.73	Cr. 651,317.54	Cr. 651,317.54	Cr. 284,676.19	Cr. 284,676.19
Total Railway Operating Expenses	$145,019,480.88	$95,587,098.35	$89,151,499.37	$49,432,382.53	$55,867,981.51
Total Tax Accruals	$19,511,127.41	$11,509,288.32	$11,344,111.91	$8,001,839.09	$8,167,015.50
Total Ry. Oper. Exp. plus Ry. Tax Accruals	$164,530,608.29	$107,096,386.67	$100,495,611.28	$57,434,221.62	$64,034,997.01
Ratio to Revenues of:					
I. Maintenance of Way and Structures	12.88	14.45	12.46	10.41	13.56
II. Maintenance of Equipment	18.32	19.54	17.71	16.39	19.29
III. Traffic	2.02	2.18	1.95	1.76	2.12
IV. Transportation—Rail Line	29.34	31.19	30.85	26.44	26.97
VI. Miscellaneous Operations	.05	.05	.05	.04	.04
VII. General	2.09	2.29	2.02	1.79	2.20
VIII. Transpn. for Inv.–Cr	Cr. .41	Cr. .47	Cr. .47	Cr. .33	Cr. .33
Total Railway Operating Expenses	64.29	69.23	64.57	56.50	63.85
Total Tax Accruals	8.65	8.33	8.21	9.14	9.34
Total Ry. Oper. Exp. plus Ry. Tax Accruals	72.94	77.56	72.78	65.64	73.19

[fol. 770]

EXHIBIT No. 222

INTERSTATE COMMERCE COMMISSION

Docket No. 19130

Farm Values and Relative Purchasing Power of Wine Grapes in California, Years 1913 to 1925, Inclusive

	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	Source Note
All Commodity Index	100	98	101	127	177	194	206	226	147	149	154	150	159	(1)
Wine Grapes:														
Value Per Ton	$13.42	$11.02	*	$15.00	$13.93	$32.74	$50.00	$75.00	$82.00	$65.00	$40.00	$63.00	$60.00	(2)
Relative Price	100	83	.....	112	104	244	372	558	611	484	298	470	448	(3)
Relative Value	100	85	.....	88	59	125	180	246	415	325	193	313	281	(4)

* Not available.

Source of Data:

(1)—Wholesale price index of Dept. of Labor, based on primary market quotations of 404 commodities. (Published in Statistical Abstract of the United States, 1925: p. 311.

(2)—Years 1913 to 1918 incl.: Reports of California State Board of Viticultural Commissioners, dated March 15, 1914, January 25, 1915, February 15, 1917, February 1, 1918 and March 1, 1919.

Years 1919 to 1925 incl.: Sixth Report of California Board of Agriculture for Period Ending December 31, 1925.

(3)—1913 equals 100.

(4)—Relative prices deflated by the All Commodity Index. The term value is used to denote pruchasing power.

March 26, 1927.

wine grapes in California during the years 1913 to 1925, inclusive. This has been prepared from official or semi-official sources.

Thereupon said Exhibit No. 222 was offered and admitted in evidence and is in the following form:

(Here follows Exhibit No. 222, marked side folio 770)

[fol. 771] A. L. CONRAD was thereupon recalled as a witness on behalf of the Defendants and, having been previously sworn, testified as follows:

I have prepared a statement showing the net operating revenues of the Atchison, Topeka & Santa Fe Railway Company, after deducting restated operating expenses and taxes from the annual gross revenues. That is the statement now shown to me and it is correct. It is for the year 1926.

Said statement was thereupon offered and admitted in evidence and marked Defendants' Exhibit No. 251 and is in the following form:

[fol. 772] DEFENDANTS' EXHIBIT No. 251

Atchison, Topeka and Santa Fe Railway Company
(Includes Panhandle & Santa Fe Ry.)

Statement of Net Operating Revenues After Deducting the Restated Operating Expense and Taxes from the Monthly Gross Revenues

January	$3,379,922.82
February	4,043,744.19
March	5,076,740.06
April	4,188,732.56
May	4,586,036.33
June	5,409,055.40
July	6,387,710.87
August	6,261,032.03
September	5,642,129.62
October	5,557,996.19
November	6,000,074.97
December	4,508,983.83
Total 12 months	$61,042,158.87

[fol. 773] I have also prepared for presentation in this case a statement of the Atchison, Topeka & Santa Fe Railway System grape train cost test of September, 1923. It is correct to the best of my knowledge and belief. This is a cost test made at the request of our executives for the purpose of determining the cost of handling the eastern grape traffic, and also the revenues secured thereon. It was desired to secure accurate facts in respect to handling

costs and the methods used for developing these facts were such as our large experience in these studies has shown to be reasonably accurate and applicable. Primarily, ten average trains moving out of Bakersfield were selected for this investigation. One each day having left that concentration terminal, namely, on September 5, 6, 7, 10, 11, 12, 13, 24, and 25th, in the year 1923. The original intention was to confine this study to these ten trains and their direct connections. However, as this traffic progressed eastward it in part moved in a greater number of trains than the original train and it was found necessary to expand the number of trains included in the study, which vary according to the number of trains that carried the traffic that left Bakersfield in the original ten trains. As a result, the study actually included grape train mileage to an average of 16 trains between Bakersfield and Chicago.

Some of the grapes moved, in the trains studied, included as well, a small quantity of other traffic as well as other grape cars than were started in the original ten trains at Bakersfield; and to adjust that situation it was necessary to convert the gross tonnage of all trains into constructive lading "Grape car miles." This conversion [fol. 774] was made in the ratio of 41.78 gross ton miles, representing 1 grape car mile. In this way the total tonnage of these 10 trains was converted into 100% grape tonnage or grape car miles, and permitted the use of the total cost of removing these trains without making questionable divisions of such costs between such grapes and other commodities carried. There were 521 cars of grapes started in the 10 trains out of Bakersfield or an average of 52 cars per train, and one or two cars of other tonnage. However, the average tonnage included in all the trains studied was the equivalent of an average of approximately 63 cars of grapes per train mile for the entire distance to Chicago. In some instances the trains carried more, and others, less, than this average.

The costs were assigned to these trains on an actual basis, as far as this was possible, and under this plan there was an actual assignment of the wages of the train and enginemen, quantities of fuel used, and these switching costs. The other- are unallocatable expenses, and they were assigned to these trains on a unit-cost basis. In such assignments there were only the main line costs considered.

The maintenance of way and structure expense for other than station facilities and tracks and the locomotive repairs and depreciation were charged to these trains on a local divisional gross ton mile basis. That is to say, each of the costs were determined separately on each operating division and the costs that were charged against these trains were the local costs in that operating district.

Car repairs and depreciation was charged to the trains on the basis of the average car mile costs in the previous [fod. 775] twelve months, but were equated for refrigerator car maintenance costs.

We, in the previous period, had ascertained that the refrigerator cars cost about 110 per cent of the average cost to maintain freight cars. Therefore, these car repairs, car repair costs, were charged against these trains on the basis of 110 per cent of the average cost in the previous 12 months, that is, the average cost per car mile. The cost of repairing refrigeration devices would be included in these refrigerator car costs, because no separation was made as between the refrigeration portion of the cost and the cost of other parts of the car.

The overhead, maintenance of equipment expenses, were charged up on the basis of the manual ratio of such to the total repair charges.

The intermediate station, agent and operating expense, were segregated between train and terminal on the basis of the experienced ratio and only a train mile pro-rata portion of the train element was charged against these trains.

The local switching expenses were assigned to these trains on the basis of the actual time that these trains were switched at the terminals enroute. And at this time it was converted into money on the basis of the average cost per switch engine hour prevailing at each of these terminals where the trains were switched.

The fuel charge was the actual quantities consumed on the trip by the locomotives handling these trains and which was appraised on the basis of the current official price.

The other locomotive and train supplies were charged up on the local unit and consumption basis per locomotive or train mile, as the case may be.

The loss and damage claim payments were included on the basis of the actual amount paid in the previous year per car of California fresh fruits and vegetables handled.
[fol. 776] The traffic expenses were charged up on a manual entire line per ton cost basis.

The general expenses were assigned to these trains on the same ratio as other expenses as prevailed during the previous 12 months for the division involved, and would also be the ratio on the entire line. The switching charges absorbed in Chicago on the locally delivered traffic was charged up on a pro rata basis based on our experience in the amount of such paid in the month of September as compared to the total number of cars handled in and through Chicago, that is, grape cars, I am speaking of. There was also included the terminal expenses in Chicago for handling the cars from the trains to the connecting lines or points where delivered. The cost of handling of empty cars westbound was included in the compilation on the basis of gross ton mile cost of the eastbound created traffic on the operating division involved. In other words, the cost of handling an empty car westbound was charged up on the same unit cost per gross ton mile as that developed for the eastbound loaded train in the operating district involved.

The ratio of the empty to the loaded car mileage was developed by taking these 521 cars leaving Bakersfield in the original 10 trains and tracing the movement of these cars westbound on their trip preceding the loaded trip eastbound.

The empty car mileage proportion of the total westbound car mileage of these cars was 81.5 per cent. In the end there was 10 per cent added to the loaded train and empty car costs, for the expense of handling the company mate-
[fol. 777] rial and which ratio represents our approximate plus cost on the cost of handling railroad traffic, and handling the company material used in the operation of the freight service on the railroad.

The company material ton miles represents approximately 16% of the revenue tonnage hauled on our railroad, but some of it is for additions and betterments and for passenger service, and when these elements are deducted and the freight operating deductions were charged for at representative points of handling such material, the cost of hand-

ling this material was found to be approximately 10 per cent of the expense incurred in handling the revenue traffic. Therefore, 10 per cent was added to the cost of revenue traffic to represent this item of expense.

To complete this cost information there was also determined during the entire month of September, 1923, the cost of assembling this class of traffic on the Valley division in California. This assembly cost was arrived at by first determining and then eliminating the cost of handling the through traffic in that district during the month and using the remainder of the actual expenses incurred in that month as representing the cost of originating and delivering traffic in the district.

There was also ascertained the loaded car miles in the district of traffic originated and delivered, and which afforded a basis for determining the average cost per loaded car mile for the originating and delivering service. And, finally, grape car assembly cost was determined by multiplying this average loaded car mile cost by the number of miles the average grape car moved in the assembling dis- [fol. 778] trict enroute to the concentration terminal at Bakersfield, California.

This exhibit in the upper section shows for each operating division the total expenses charged against the trains studied. The number of grape car miles involved in the gross tonnage handled by these trains and the average cost per car mile on the division.

These costs could not be added in order to determine the cost of one car, because there was a varying quantity of trains and cars included in the study on the different divisions over which the traffic passed. Therefore, there is shown in the lower section a typical cost per car mile and per car of grapes moving to Chicago, over the Chicago district.

This is shown by multiplying the average cost per car mile as shown in the upper section, by the number of miles the car traveled on the division, bringing out the total expense for moving the traffic over the division. This is done for each of the divisions involved and the total for the entire trip amounted to $352.68 per car. In this study there was no segregation made of switching expense as between that part which represents the switching given for the pur-

pose of refrigeration and the other train switching. That amount has been estimated and a deduction made here. The allowance for switching these cars to and from the icing platforms was estimated at 35¢ per car per switch, and that there were 7 switches of this class involved in the trip between the producing territory and Chicago.

Mr. Moore: I might say in that connection, without any justification of our refrigeration charges in accordance with [fol. 779] the decision of the Commission in the perishable freight investigation, 56 ICC, 443-449, we have used 35¢ per car per switch; and on the average, as shown in that and succeeding cases, there were about 7 switches charged for, making $2.45, so we have deducted this from the costs shown on this exhibit.

After deducting the icing and switching costs of $2.45 per car, there remains a net cost of $350.23 per car, which is an average of 15.02 cents per car mile.

There is nothing included in these costs except operating expenses. The study was not carried beyond the operating expense costs.

Q. Have you included anything for taxes?

A. There are no taxes included here, nor rentals, nor hire of equipment.

Q. Now, in 1926 what was the ratio of taxes to operating expenses?

A. 12.4 per cent.

Q. Is this showing, in your opinion, representative of, or unrepresentative of corresponding costs in 1926? If your answer be in the affirmative or the negative, state the reasons for your answer?

A. I believe that this represents a typical cost for 1926 as well as for 1923, for the reason that the same size trains were operated in 1926 as were in 1923. In other words, the loading was no heavier in 1926 than in 1923. Therefore, this traffic would not receive the benefit in the reduction resulting from additional train loading, that is, heavier train loads.

The average cost per hour of wages of employees on the Santa Fe was 59.1¢ per hour—that was in 1923. In 1926 [fol. 780] it was 62¢ per hour, showing an increase in the labor costs of about 5 per cent. There was a small reduction

in the average material costs in 1926 as compared to 1923 which amounted to about 3.75 per cent; there is more labor used than material in the operation of a railroad. Therefore——

Q. (Interposing.) Well, by that you mean that the cost of the labor exceeds the cost of the material?

A. Yes; the cost of the labor exceeds the cost of the material. Therefore the increase in the wages would have more effect on the situation in the two years than the reduction on the material. There was no material change in the average cost per train mile in 1923—between 1923 and 1926. The train and enginemen's cost increased in 1926 over 1923. And the cost—that means the trainmen's—costs, were 26¢ per train mile in 1923. It was 29¢ per train mile in 1926. The enginemen's cost was 2[illegible]¢ per train mile in 1923 and 23¢ per train mile in 1926—on the Western lines.

Q. That is, the western lines?

A. Yes.

Q. That is one of the Grand Divisions of the Santa Fe?

A. Yes. It covers the territory between Belen, New Mexico, and Wellington, Kansas.

Q. Yes.

A. The trainmen's costs on the western lines per train mile were 21¢ in 1923; it was 25¢ in 1926; the enginemen's costs were 19¢ per train mile in 1923 and 22¢ in 1926. On the eastern lines, covering the territory between Wellington, Kansas, and Chicago, the cost per trainmen per train [fol. 781] mile was the same, precisely the same, also for enginemen in both periods.

Taking all these things into consideration I believe that the cost of handling the grape trains or deciduous fruit trains was just as much in 1926 as it was in 1923, although there was some reduction in the average costs per gross ton mile of all traffic.

Q. Mr. Conrad, this study was made in connection with a one-system operation, was it, not from California to Chicago, was it?

A. Yes, it was all a one-system operation.

Q. Now, in your opinion would it be possible for that traffic to be handled as cheaply by any combination of lines between California and Chicago as it was handled by the Santa Fe from California to Chicago?

A. I do not think it could be handled as cheaply by combination lines as it was handled by the Santa Fe. I base that opinion on the fact that any combination of lines that can be made would show a higher operating ratio than the Santa Fe.

Q. Was this study made, Mr. Conrad, for presentation in any case pending before the state commission or the Federal commission?

A. It was not. It was made altogether for the information of our executives; and, in using the vernacular of the street, it was the low-down cost information.

Q. Sweet and low down?

A. Yes.

Q. Had you anything to add, Mr. Conrad?

A. I have nothing more to say about it.

[fol. 782] Thereupon said statement was offered and admitted in evidence as identified and explained by said witness, marked Defendants' Exhibit No. 252, and in the following form:

[fol. 783] DEFENDANTS' EXHIBIT No. 252

The Atchison, Topeka & Santa Fe Railway System

Grape Train Cost Test, September, 1923; Operating Expenses of Grape Trains Studied

Division	No. of train miles represented in test	Total operating expense of trains studied	No. of grape-car miles involved in gross ton-miles of trains studied	Average cost per grape-car mile (cents)
Valley	2,610	22,025.90	61,438	35.85
Arizona	8,068	65,755.93	375,312	17.52
Albuquerque	10,234	80,484.01	620,596	12.96
Pecos	2,880	29,708.00	243,423	12.20
Plains	3,090	30,415.36	248,403	12.24
Panhandle	1,272	14,868.31	100,767	14.75
Middle	1,778	15,570.85	136,331	11.42
Eastern	1,512	14,491.14	129,106	11.22
Kansas City Terminal	.....	2,280.81	1,124 cars	$2.03 per car
Missouri	3,315	25,869.45	222,729	11.61
Illinois	3,565	30,353.07	268,466	11.30
Chicago Terminal	.....	5,012.37	855 cars	$5.97 per car
Loss & damage freight	.....	6,700.47	902 cars	$7.43 per car
Total	38,324	$343,626.07	2,406,571	.....

Typical Cost per Car-mile and Per Car of Grapes Moved to Chicago or Chicago District

Division	Miles hauled on division	Average expense per car mile on division	Total expense on division for one car of grapes
Valley	118	35.85	$42.30
Arizona	459	17.52	80.42
Albuquerque	414	12.96	53.65
Pecos	240	12.20	29.28
Plains	309	12.24	37.82
Panhandle	106	14.75	15.63
Middle	127	11.42	14.50
Eastern	108	11.22	12.11
Kansas City Terminal	(per car)		2.03
Missouri	221	11.61	25.66
Illinois	229	11.30	25.88
Chicago Terminal	(per car)		5.97
Loss & Damage Freight	(per car)		7.43
Total mileage & expense.	2,331	.....	$352.68
Less allowance for switching cars to and from icing platforms (averaging 7 switches at 35c per car per switch)			2.45
Average expense per car mile			$350.23
			15.02 cents

[fol. 784] Mr. Westlake: I might say, Mr. Matthew, that in view of the witness' statement that the repairs to refrigeration devices, or the cost for these repairs is included in his figures, and, inasmuch as our justification of refrigeration charges—we have included $5 per car, it may be stipulated that there may be deducted from the total cost of $350.23 the sum of $5.00, leaving a net cost of $345.24,- - which will result in a change in the last figure on Exhibit 252 of 15.02¢ per car mile, to $.1481 per car mile.

[fol. 785] Cross-examination:

By Mr. Matthew:

Q. Mr. Conrad, in dealing with such divisions as your Panhandle, the middle and eastern divisions, how did you determine your operating costs? I am referring particularly now to your transportation costs?

A. The actual wages paid for the trains under the test was included. The fuel was charged up on the basis of the actual quantity consumed on the trip by the engines that hauled these trains. The switching charges were charged up on the basis of the actual time that the switch engine switched the trains, multiplied by the average cost per hour incurred at the terminal.

Q. Then, as I understand it, you took the direct costs of moving these particular trains?

A. Yes, as far as that could be done.

Q. Well, now, as far as the wages of the train and enginemen are concerned, of course that could be definitely determined?

A. Yes, absolutely correct.

Q. And as far as the locomotive fuel costs are concerned, they could be quite definitely determined?

A. Yes; that would also be true respect to switching costs.

Q. Yes. Now, can you give me the amount which you determined to be the expenses of moving one of these trains over your Valley Division for the 118 miles which you have allowed here, represented by train and enginemen's wages, Mr. Conrad?

A. Well, the Valley Division costs were not determined [fol. 786] in that way. As I explained, the Valley Division was treated in this way: We determined the costs on the same plan for moving the through freight traffic on the Valley Division, excluded that from the actual expenses charged in that month, and the remainder was taken as the cost of the delivering and originating traffic on that division and removing it to Bakersfield.

Q. Yes. Now, then, as to your Valley Division,—and I would understand that you first assembled your total transportating costs, that you then determined the cost of transporting through traffic on that division and deducted that from your total, and then you determined the cost of moving local traffic, other than the fruit traffic, on that division, and deducted that?

A. No; I didn't take that. The costs that I have here are the average costs of delivering and originating of traffic on the Valley Division.

Q. All right. Would it include your local dead freight moved between points on your Valley Division?

A. Yes.

Q. It includes, then, the costs of handling all your local freight, carload and less than carload on that Valley Division?

A. It does.

Q. All right. Now, then, let us proceed from the Valley Division toward the east. I would understand that the Arizona Division, so-called, as shown here, would cover the movement from Bakersfield eastward?

A. Yes, from Bakersfield to Seligman, Arizona.

Q. Now, then, I would understand that you determined [fol. 787] actual costs incurred by your company for trainmen and enginemen's wages in handling this traffic, these trains, from Bakersfield to Seligman; is that right?

A. Yes.

Q. Will you give me that cost?

A. I will have to dig down in the details, I can give you the aggregate. Of course, each train was taken separately; but I have it aggregated here—if that is what you want, Mr. Matthew. * * * In addition to the other items we are talking about (trainmen's and enginemen's wages and fuel oil and coal expenses),—the locomotive repairs are substantially allocated to these trains because the repair cost to be considered is the cost of the repairs to this same type of engine operating on the same division during the previous 18 months.

By Mr. Matthew:

Q. Mr. Conrad, when it came to your maintenance expenses, it is my understanding that you confined your inquiry on the main line, at least from Bakersfield to Chicago?

A. Yes.

Q. And you made your allocation to this traffic upon what basis?

A. On the main line, gross ton mile cost for maintenance, Mr. Matthew.

Q. Gross ton mile?

A. Gross ton mile cost for maintenance in the previous twelve months.

Q. Now, how did you make your allocation of maintenance costs on the Valley Division?

A. We took the actual costs incurred on that division in the month of September. We took the costs as they lay.

Q. Well, but how did you allocate them to this assembly service, for example?

A. The costs that were charged to the Valley Division in our regular accounting. It was a fixed amount. After

eliminating the portion that would apply to the through [fol. 788] traffic, the remainder represented the maintenance cost for assembling.

Q. Well, but I was asking about maintenance, about your maintenance of way costs.

A. That would be the same.

Q. Well, you got your total maintenance of way costs on your Valley Division?

A. Yes; we get that every month.

Q. You had to distribute that in some way easterly to through traffic, as you term it, and this local traffic, did you not?

A. Yes, sir.

Q. How is that done?

A. We eliminate the through traffic on the basis of the average cost per gross ton of all traffic.

Q. Then you reduce your maintenance cost to a factor of per gross ton mile?

A. Yes.

Q. And you allocated that to this assembly traffic, accordingly?

A. Not exactly that. The maintenance costs per gross ton mile were used only in eliminating the expenses of the through traffic. Now, the remainder of the traffic which represents the assembling costs is determined and assigned to grapes on the car mile cost basis. For example, after we eliminate the through traffic we may have a cost, say, of $10,000 for maintenance, and we will say we have 10,000 car miles, loaded car miles in the district. By dividing the car miles into the $10,000 we get the average cost per cost per car mile. That is the way it was assigned to the grape traffic.

[fol. 789] Q. That is what I am trying to get at. Then you allocated your maintenance expenses on the Valley Division in direct proportion to the car miles?

A. Yes.

By Mr. Westlake:

Q. That is, after taking out the through maintenance of way expenses?

A. Yes, of course.

By Mr. Matthew:

Q. Well, you were under the necessity of taking them out on the basis of car miles?

A. No. I take them out on the gross ton mile basis.

Q. But why do you shift from gross ton mile segregation to per car mile segregation?

A. Because I didn't find any practical way of determining the assembling costs on any other basis than on a car mile basis; because the cars move from different points and for different distances; and I had to reduce the costs to a common unit and that was car mile in order so as to apply it to the average distance that the fruit traffic was hauled, Mr. Matthew.

Q. Then why would you not take out the through traffic on the same basis; that is what I cannot quite understand, Mr. Conrad?

A. Well, because I made no separation except as between the through traffic and the local traffic in the district. Now, the local traffic in the district represents two kinds of traffic. It represented the other freight as well as the deciduous fruit traffic.

Q. All right. Now, you allocated your traffic expenses on a per ton basis, you say?

A. Yes, per ton basis. That is not a division expense; [fol. 790] is an entire line expense.

Q. What is the theory of the allocation upon the per ton basis?

A. Well, it was assumed that the deciduous fruit would cost just as much as any other traffic, expense per ton, as all traffic, on the railroad.

Q. Now, have you at any time prepared a cost study similar to this to cover the movement of vegetables from California to Chicago?

A. I have made a study covering the movement of lettuce from California to Chicago. In that study I used these 1923 gross ton mile costs that I developed from this study.

Q. What did you get as the total mileage and expenses of handling lettuce over your line from California to Chicago, Mr. Conrad?

A. I don't recollect the figures, but I remember this feature about it; that it didn't pay operating expenses,—

the revenue on the lettuce traffic didn't pay operating expenses.

Q. It must have been less than $352.68?

Mr. Westlake: Well, Mr. Matthew, what must have been less than that—the cost, or the revenue?

By Mr. Matthew:

Q. The revenue—I should have said—the revenue.

A. No, not that; because, as I recall it, the lettuce traffic doesn't load as heavy as the grapes, therefore, it would be a higher cost on that.

Q. Now, included in the information I requested you to furnish me, will you simply let me have the figure derived [fol. 791] by you for the cost of handling the lettuce traffic which is comparable with this figure of $350.23, which you show upon your Exhibit No. 252?

Q. Now, you spoke of the loss and damage claim item which you have included. Am I correct in recalling that that is based upon the payments made in 1922?

A. Payments made in the year 1922 divided by the number of cars of the fresh fruit and vegetable traffic moving from California in 1922 excluding citrus fruit.

Q. These are 1922 payments which presumably were made largely upon claims covering 1921 shipments?

A. I think so; largely that. The payments on the 1922 shipments would not have entered the accounting to any large extent in the year 1922. That would come later.

Q. I would so understand. I think that is all.

After the close of the hearing in this proceeding the defendants, pursuant to a request of the complainant, submitted to the Interstate Commerce Commission a statement entitled "The Atchison, Topeka & Santa Fe Railway Company Statement of Enginemen's and Trainmen's Wages and Fuel Cost for one Train of Grapes Bakersfield to Chicago as per test in September 1923." It was stipulated at the hearing that this statement should be part of the evidence in this proceeding. Said statement is in the following form:

[fol. 792] The Atchison, Topeka and Santa Fe Railway Company

Statement of Enginemen's and Trainmen's Wages and Fuel Cost for One Train of Grapes, Bakersfield to Chicago, as per Test in September, 1923

Filed on Request of Complainants in Docket No. 19130

Operating division	Distance across division	Average train and enginemen's wages per train	Add proportion for empty cars	Total wages of enginemen and trainmen per train of fruit	Average per train-mile
Arizona	459	$192.78	$98.59	$291.37	$.63
Albuquerque	414	169.74	86.81	256.55	.62
Pecos	240	88.80	39.36	128.16	.53
Plains	309	98.88	43.82	142.70	.46
Panhandle	106	31.80	14.09	45.89	.43
Middle	127	35.56	15.76	51.32	.40
Eastern	108	31.32	13.88	45.20	.42
Missouri	221	70.72	31.34	102.06	.46
Illinois	229	68.70	30.45	99.15	.43
Total & average	2,213	788.30	374.10	1,162.40	.53

[fol. 793]

Operating division	Distance across division	Fuel cost per loaded train	Add proportion for empty cars	Total fuel cost per train of fruit	Average cost per train-mile	Average cost per train-mile for train wages and fuel
Arizona	459	$316.71	$161.91	$478.62	$1.04	$1.67
Albuquerque	414	252.54	129.15	381.69	92	1.54
Pecos	240	146.40	64.88	211.28	88	1.41
Plains	309	120.51	53.41	173.92	56	1.02
Panhandle	106	51.94	23.02	74.96	71	1.14
Middle	127	53.34	23.64	76.98	61	1.01
Eastern	108	56.16	24.89	81.05	75	1.17
Missouri	221	143.65	63.67	207.32	94	1.40
Illinois	229	158.01	70.03	228.04	1.00	1.43
Total & average	2,213	1,299.26	614.60	1,913.86	86	1.39

[fol. 794] A. E. TAYLOR was thereupon called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

I am connected with the food research institute of Stanford University. I have been engaged for many years in the study of food problems in relation to production, consumption and distribution. During the World War I was with the Food Administration and a member of the War Trade Board in charge of foods and feeds. I came to Stanford University three years ago when its institute of research was established. We give our entire time to investigations relating to food supplies. We keep a general view of the entire field of food production and distribution and consumption.

I have been a member of the faculty of the University of Pennsylvania, and I was on the staff of the American Embassy for a year in Berlin Studying food conditions in the prison war camps. I was a member of Mr. Hoover's Food Administration with the title of Director of Division of Reserves. After the Armistice I made a study of food conditions in the Balkans. My original college degree was an LLB. I am engaged in the study of the disposition and marketing of food stuffs.

The present acreage planted in the State of California is 680,000 acres. 30,000 acres are planted but not in bearing. The total yield is difficult to ascertain. The grape crop depends upon various factors, including weather conditions and the relative inactivity of parasitic diseases, the condition of the soil and its care.

It is my understanding that in recent years the ratio of returns on the grape crop, outside of liquids, at least, has been unsatisfactory from the standpoint of labor costs and investment charges.

[fol. 795] There are low cost producers and high cost producers and it is difficult to reach an average cost of production. There is a wide variation in production cost between high cost producers and low cost producers. I have never seen a trustworthy estimate of the average cost of the production of grapes in California and I question the possibility of procuring it on account of the difficulty of obtaining trustworthy information.

Grapes may be roughly divided into three classes. Raisin grapes, table grapes and juice grapes. A sharp line does not divide these kinds, however. Raisin grapes can be marketed as table grapes, raisin grapes may be marketed as juice grapes, but table grapes cannot be marketed as raisin grapes, but may be marketed as juice grapes. The result is that it is possible to market a surplus of raisin grapes as juice grapes.

A large proportion of California grapes are sold in the east at auction. Grapes are shipped and sold chiefly by commercial shippers.

The grape shippers have no trade association to my knowledge. The conditions in the shipment of grapes in transcontinental transportation are competitive and not coordinative.

No effort has been made to my knowledge to stimulate the consumption of grapes generally. This would be the natural function of the growers if such a campaign should be undertaken.

There are daily fluctuations in the prices of grapes which are in my opinion, due to the quality of the food, quantity, the weather, competitive conditions, the belief of the buyer [fol. 796] as to the ultimate quantity of the crops, and many other considerations including to a degree the perishability of the product. Grapes must be taken off the market within a certain time. They are perishable in more than the average degree.

With respect to the operation of supply and demand in the case of grapes, there is an immediate supply and an immediate demand in the east, but the ultimate demand is in the east and the ultimate supply in California. This relationship, the time required to remove that commodity from California to the east to meet the demand, and the varying competition between other fruits, would prevent anyone from establishing any definite relationship between supply and demand, as can be done at a common market where these factors are not operating.

[fol. 797] Q. Now, Doctor, other things being equal, if the freight rate on fresh grapes moving transcontinentally from California were to be substantially reduced, and growers of raisin grapes believed such a reduction would accrue to the growers in the form of substantially higher prices, and believing further that such prospective prices for raisin grapes sold in the fresh grape market would be higher than they would receive for the same grapes delivered to the Raisin Association, would that have any tendency to encourage growers to ship their grapes fresh instead of dried, do you think?

A. They would face that temptation. It would have that tendency.

Q. The effect, therefore, other things being equal and under certain circumstances of production, would you say that lowering the rate, the freight rate on fresh grapes would have the effect of transferring grapes from the raisin market to the fresh grape market; or would your answer be to the contrary?

A. It could have that effect in the absence of some control.

Q. What would be the logical effect of it; or what would logically be the effect of it?

A. If I were a member of the Raisin Growers Exchange and had the opportunity to sell my crop for fresh grape purposes rather than deliver the raisins to the Association, and get away with it, I should certainly do that.

Q. Would that hold for growers in the Raisin Growers Association and outside of it?

A. Naturally, outside of it there is complete freedom; inside it would amount, under different circumstances to less free transactions; it would hold, however, just the same.

[fol. 798] Q. Just assuming that at the outset a reduction in freight rates on grapes transcontinentally from California would inure to the benefit of the growers, what effect if any, would that have on the production and marketing thereafter?

A. It would be followed by increased production, in my judgment.

Q. And that increased production would be followed by what?

A. Other things being equal, by a decline in price.

If a reduction of the freight rate on fresh deciduous fruits should lead to increased production, other things being equal, the effect would be to lower the price and it would be certainly not improbable to wipe out the gain in return by the freight rate reduction.

The present method of living in the United States, as compared with the past, has caused a decline in the per capita consumption of food. The public is reducing its consumption of staples and increasing its consumption of specialities. The consumption of concentrated foods is declining and is being replaced by the consumption of fruits and vegetables which give the bulk of that which the person wants, with less calories. The western coast has undergone an expansion in the acreage development from the more common field crops to fruits and vegetables.

Since the war, with the general rise in freight rates from coast to coast, a relative burden has been placed on the western products as compared to comparable products raised nearer the centers of population.

[fol. 800]

EXHIBIT No. 253

Statement Showing the Volume of Tonnage Moving Over the Lines of the Southern Pacific Company (Pacific Lines) During the Calendar Year of 1926 from or to Points on Lines of the Southern Pacif and its Short-line Connections on the One Hand and to or from Points in Eastern Defined Territory (Nanely, Groups A. B, C, D, E, F, G, H, J, K, L and M) on the Other. The Figures Shown 2,000 Pounds and the Commodities Shown are the Same as Shown on Defendants Exhibit No. 167, Witness J. L. Fielding

Commodity	Destination																		
	Colo. and N. M.	Kans. and Nebr.	Okla.	Tex.	N. D. and S. D.	Minn.	Iowa	Mo.	Ark.	La.	Ill.	Wis.	Ind.	Mich.	Ohio	Pa.	W. Va.	New Eng.	N. Y.
(Commodities Moving Eastbound from California to Eastern Defined Territory)																			
Bags and Bagging	1,584	.....	20	518	.....	20	94	20	218	143	.....	.....	.....	.....	.....	.....	.....	.....	
Dried Beans	4,878	565	873	5,283	.....	214	935	2,661	627	1,914	3,840	122	1,561	1,470	3,651	4,160	1,185	242	380
Honey	36	446	350	114	.....	.....	58	97	19	.....	193	20	.....	.....	72	66	.....	.....	80
Canned Goods	3,978	15,101	8,407	11,912	3,040	7,074	6,292	19,161	1,841	915	39,677	4,786	5,955	8,391	14,529	4,416	2,603	597	2,180
Cottonseed Cake	406	60	.....	295	25	55	.....	65	.....	25	2,240	.....	.....	.....	25	.....	.....	.....	
Fibers	.....	.....	.....	.....	194	536	.....	2,572	.....	.....	129	9	29	.....	422	.....	.....	.....	34
Hides and Pelts	.....	.....	.....	.....	.....	.....	.....	31	.....	.....	511	939	.....	562	25	442	20	761	408
Hops	.....	.....	.....	22	.....	51	8	403	.....	.....	1,224	347	197	105	746	90	.....	.....	57
Rice	297	20	.....	850	.....	.....	1,679	377	.....	5,249	400	.....	.....	.....	509	.....	.....	.....	38
Wool (scoured)	.....	.....	.....	31	.....	.....	.....	227	.....	.....	15	.....	.....	.....	.....	27	.....	2,995	191
(Commodities Moving Westward to California from Eastern Defined Territory)																			
Bags and Bagging	.....	.....	.....	1,501	.....	.....	.....	35	.....	1,148	44	.....	362	.....	.....	.....	.....	.....	74
Plate Glass	.....	.....	.....	.....	.....	412	.....	445	.....	.....	2,021	128	294	282	193	186	.....	.....	
Stoves and Ranges	.....	71	.....	.....	.....	179	.....	1,008	.....	.....	2,008	592	162	1,426	1,317	143	.....	65	30
Machinery	1,016	109	56	471	.....	970	3,602	1,601	110	188	13,776	6,891	1,900	1,795	6,106	3,604	36	585	3,085
Refined Oil	3,312	1,360	21,385	9,698	.....	.....	754	73	.....	33	472	57	223	.....	442	12,234	502	20	1,127
Tin and Tin Plate	123	.....	.....	.....	.....	.....	.....	.....	.....	.....	946	.....	26,270	.....	4,619	40,370	1,046	.....	146
Structural Iron	992	409	.....	139	.....	626	.....	829	.....	87	10,402	2,061	24,547	126	13,357	15,187	566	43	1,362
Nails and Wire (Iron)	7,680	.....	.....	179	.....	1,215	408	47	.....	78	4,952	.....	316	34	1,196	581	.....	.....	967
Bar and Rod (Iron)	3,620	.....	.....	53	.....	123	.....	88	.....	.....	725	80	1,486	65	733	2,290	.....	.....	
Paints	1,115	101	.....	252	.....	.....	.....	2,362	.....	344	4,472	319	80	164	328	207	52	.....	224
(Rates Other Than Shown Above from California to Eastern Defined Territory																			
Apples	464	3,709	578	5,609	74	52	76	295	151	1,190	7,189	186	76	711	448	413	1,297	90	12,1
Soda, nitrate of	1,390	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Borax	.....	80	.....	.....	.....	20	140	162	.....	20	1,768	486	544	302	1,378	873	60	380	1,06
Dried Fruit	2,179	5,838	2,587	7,488	3,062	7,624	5,444	8,590	1,598	1,129	20,536	4,982	2,615	6,856	10,452	5,161	1,043	1,849	4,37
Oranges (pre-cooled)	6,631	21,560	11,174	34,968	1,258	12,906	14,688	19,257	1,580	2,930	45,531	10,252	8,050	23,785	21,250	20,525	450	17,427	64,25
Nuts	283	718	144	459	58	359	391	640	66	95	3,250	168	199	359	796	1,356	59	732	2,58
Onions	305	1,386	45	2,257	157	1,045	122	1,096	31	2,114	10,215	598	60	975	227	1,957	30	2,645	2,47
Eggs	.....	389	.....	44	.....	19	39	13	.....	58	1,771	.....	.....	334	104	1,055	.....	425	9,33
Flour	15,704	12,852	2,087	498	1,540	5,661	1,730	1,649	.....	.....	286	2,127	933	.....	.....	.....	.....	26	
Staves and Headings	.....	.....	.....	33	.....	33	.....	.....	1,908	127	.....	.....	.....	.....	.....	.....	.....	.....	
Canned Goods	2,153	628	.....	354	59	944	4,235	20	165	163	7,311	3,241	5,181	325	40	1,844	26	61	2
Castings	243	.....	.....	.....	.....	.....	113	243	.....	.....	1,023	127	1,010	25	98	58	.....	.....	1,3
Wrapping Paper	.....	86	.....	.....	.....	.....	.....	263	.....	246	41	1,100	.....	109	188	.....	.....	166	6
Soap	.....	61	.....	.....	.....	88	.....	1,783	.....	60	473	177	30	.....	287	.....	.....	.....	
Starch	.....	.....	.....	.....	.....	171	875	.....	.....	.....	4,032	.....	118	.....	30	.....	.....	.....	
Turpentine	20	.....	.....	60	.....	.....	.....	.....	.....	172	20	.....	.....	.....	.....	.....	.....	.....	

San Francisco, March 30, 1927.

EXHIBIT No. 253

lume of Tonnage Moving Over the Lines of the Southern Pacific Company (Pacific Lines) During the Calendar Year of 1926 from or to Points on Lines of the Southern Pacific Company (Pacific Lines) nnections on the One Hand and to or from Points in Eastern Defined Territory (Nanely, Groups A. B, C, D, E, F, G, H, J, K, L and M) on the Other. The Figures Shown Herein Represent Tons of e Commodities Shown are the Same as Shown on Defendants Exhibit No. 167, Witness J. L. Fielding

	Destination																				
	Colo. and N. M.	Kans. and Nebr.	Okla.	Tex.	N. D. and S. D.	Minn.	Iowa	Mo.	Ark.	La.	Ill.	Wis.	Ind.	Mich.	Ohio	Pa.	W. Va.	New Eng.	N. Y.	N. J.	Del. Md. D. C.	Va.
(Commodities Moving Eastbound from California to Eastern Defined Territory)																					
...	1,584	.....	20	518	.....	20	94	20	218	143	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
...	4,878	565	873	5,283	.....	214	935	2,661	627	1,914	3,840	122	1,561	1,470	3,651	4,160	1,185	242	380	65	195	1,080
...	36	446	350	114	.....	.....	58	97	19	.....	193	20	.....	.....	72	66	.....	.....	80	.....	.....	.....
...	3,978	15,101	8,407	11,912	3,040	7,074	6,292	19,161	1,841	915	39,677	4,786	5,955	8,391	14,529	4,416	2,603	597	2,180	64	185	644
...	406	60	.....	295	25	55	.....	65	.....	25	2,240	.....	.....	.....	25	.....	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	194	536	.....	2,572	.....	.....	129	9	29	.....	422	.....	.....	.....	34	.....	.....	.....
	.....	.....	.....	.....	.....	.....	.....	31	.....	.....	511	939	.....	562	25	442	20	761	408	57	113	.....
	.....	.....	.....	22	.....	51	8	403	.....	.....	1,224	347	197	105	746	90	.....	.....	57	.....	10	.....
...	297	20	.....	850	.....	.....	1,679	377	.....	5,249	400	.....	.....	.....	509	.....	.....	.....	38	.....	.....	.....
	.....	.....	.....	31	.....	.....	.....	227	.....	.....	15	.....	.....	.....	.....	27	.....	2,995	191	.....	.....	.....
(Commodities Moving Westward to California from Eastern Defined Territory)																					
	.....	.....	.....	1,501	.....	.....	.....	35	.....	1,148	44	.....	362	.....	.....	.....	.....	.....	74	.....	.....	.....
	.....	.....	.....	.....	.....	412	.....	445	.....	.....	2,021	128	294	282	193	186	.....	.....	.....	.....	.....	.....
	.....	71	.....	.....	.....	179	.....	1,008	.....	.....	2,008	592	162	1,426	1,317	143	.....	65	30	75	.....	12
...	1,016	109	56	471	.....	970	3,602	1,601	110	188	13,776	6,891	1,900	1,795	6,106	3,604	36	585	3,085	407	1,081	214
...	3,312	1,360	21,385	9,698	.....	.....	754	73	.....	33	472	57	223	.....	442	12,234	502	20	1,127	335	.....	27
...	123	.....	.....	.....	.....	.....	.....	.....	.....	.....	946	.....	26,270	.....	4,619	40,370	1,046	.....	146	.....	1,709	.....
...	992	409	.....	139	.....	626	.....	829	.....	87	10,402	2,061	24,547	126	13,357	15,187	566	43	1,362	166	.....	21
...	7,680	.....	.....	179	.....	1,215	408	47	.....	78	4,952	.....	316	34	1,196	581	.....	.....	967	20	50	.....
...	3,620	.....	.....	53	.....	123	.....	88	.....	.....	725	80	1,486	65	733	2,290	.....	.....	.....	.....	.....	.....
...	1,115	101	.....	252	.....	.....	.....	2,362	.....	344	4,472	319	80	164	328	207	52	.....	224	33	.....	.....
(Rates Other Than Shown Above from California to Eastern Defined Territory																					
...	464	3,709	578	5,609	74	52	76	295	151	1,190	7,189	186	76	711	448	413	1,297	90	12,186	.....	94	18
...	1,390	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	.....	80	.....	.....	.....	20	140	162	.....	20	1,768	486	544	302	1,378	873	60	380	1,060	568	957	.....
...	2,179	5,838	2,587	7,488	3,062	7,624	5,444	8,590	1,598	1,129	20,536	4,982	2,615	6,856	10,452	5,161	1,043	1,849	4,372	318	1,162	1,198
...	6,631	21,560	11,174	34,968	1,258	12,906	14,688	19,257	1,580	2,930	45,531	10,252	8,050	23,785	21,250	20,525	450	17,427	64,255	126	2,413	288
...	283	718	144	459	58	359	391	640	66	95	3,250	168	199	359	796	1,356	59	732	2,583	.....	237	34
...	305	1,386	45	2,257	157	1,045	122	1,096	31	2,114	10,215	598	60	975	227	1,957	30	2,645	2,471	15	791	76
	.....	389	.....	44	.....	19	39	13	.....	58	1,771	.....	.....	334	104	1,055	.....	425	9,331	96	27	.....
...	15,704	12,852	2,087	498	1,540	5,661	1,730	1,649	.....	.....	286	2,127	933	.....	.....	.....	.....	26	40	.....	.....	.....
	.....	.....	.....	33	.....	33	.....	.....	1,908	127	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
...	2,153	628	.....	354	59	944	4,285	20	165	163	7,311	3,241	5,181	325	40	1,844	26	61	265	77	15	.....
...	243	.....	.....	.....	.....	.....	113	243	.....	.....	1,023	127	1,010	25	98	58	.....	.....	1,301	9	479	58
	.....	86	.....	.....	.....	.....	.....	263	.....	246	41	1,100	.....	109	188	.....	.....	166	612	.....	.....	.....
...	.....	61	.....	.....	.....	88	.....	1,783	.....	60	473	177	30	.....	287	.....	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	171	875	.....	.....	.....	4,032	.....	118	.....	30	.....	.....	.....	.....	.....	.....	.....
...	20	.....	.....	60	.....	.....	.....	.....	.....	172	20	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

1927.

[fol. 799] Cross-examination:

One of the serious factors in our problems here is the extreme perishability of this product. A second factor is the very great distance of the points of production from the main points of distribution. It is rather difficult to restrain the flow of any commodity of agricultural origin. Citrus fruit can remain on the trees for a considerable length of time after it is ready for harvesting, without injury. The length of time for which pears, peaches and plums can remain on the trees is shorter than that of citrus fruits, and in the case of grapes it is much shorter.

Thereupon H. C. HALLMARK was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

I am Assistant Freight Traffic Manager of the Southern Pacific Railroad Company. I have had twenty-two years railroad experience. I have heard Mr. Fielding's testimony in this case. I have prepared an exhibit showing the volume of tonnage moved over the Southern Pacific Company during the year 1926 under the rates shown in the Exhibit. That is the statement now shown to me marked for identification as Defendants' Exhibit 253.

Thereupon the statement was marked, identified and submitted into evidence as Defendants' Exhibit 253, and is in the following form:

(Here follows Defendants' Exhibit No. 253, marked side folio page 800)

[fol. 801] I have also prepared an exhibit of the empty and loaded movements of refrigerator equipment through the interchange points of the Southern Pacific Company with its eastern connections on transcontinental traffic for the year 1926. This includes all refrigerator cars passing these various gateways.

Said statement was thereupon opened and received in evidence marked as Defendants' Exhibit 254 and is in the following form:

[fol. 802] EXHIBIT No. 254

Witness: Hallmark

Empty and Loaded Movement of Equipment Through the Interchange points of the Southern Pacific Company (Pacific Lines) with Its Eastern Connections on Transcontinental Traffic (1926)

Refrigerator Cars

	Eastbound		Westbound	
	Loads	Empty	Loads	Empty
Vaughn, N. M.	108	13	96	677
Deming, N. M.	130	53	48	134
El Paso, Texas	27,648	868	6,044	17,937
Ogden, Utah	70,703	1,270	9,947	56,110
Total	98,589	2,204	16,135	74,858
Box Cars				
Vaughn, N. M.	700	45	162	1,548
Deming, N. M.	752	779	858	407
El Paso, Texas	26,488	7,792	29,168	7,119
Ogden, Utah	54,356	3,064	36,806	6,143
Total	82,296	11,680	66,994	15,217
Tank Cars				
Vaughn, N. M.	31	80	74	36
Deming, N. M.	26	91	115	26
El Paso, Texas	1,158	1,138	1,156	1,137
Ogden, Utah	1,557	484	521	1,545
Total	2,772	1,793	1,868	2,744

The westbound empties are the following percentages of the eastbound loads:

Refrigerator cars	75.92%
Box cars	18.49%
Tank cars	98.98%

and the following percentages of the east and westbound loads:

Refrigerator cars	65.25%
Box cars	1.02%
Tank cars	59.16%

[fol. 803] I have ascertained the ratio of the eastbound tonnage of the various commodities to the total eastbound transcontinental tonnage, in the case of the Southern Pacific Company. These figures are as follows: Deciduous fruits, excluding apples, 12.5 per cent; citrus fruits, 9.0 per cent; vegetables and melons, 12.3 per cent; apples, 0.3 per cent; total of all perishables, 34.1 per cent; and lumber, 27.5 per cent. Those five items constitute 61.6 per cent of the total eastbound transcontinental traffic of the Southern Pacific Company. That lumber movement includes Oregon lumber.

Thereupon there was offered and received in evidence as complainant's Exhibit No. 255 a statement which is in the following form:

[fol. 804] COMPLAINANT'S EXHIBIT No. 255

Witness: Matthews

(P. 1 of 2 pp.)

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 19130

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY et al.

Statement, as of February 15, 1927, Showing Fuel-oil Prices, 1920-1926, Inclusive

Ex Tank-San Francisco Bay Refineries

1920:		
January 1st	$1.60	
March 17th	1.85	
May 26th	2.10	
July 13th	2.00	Shell price $2.35—Reduced to $2.00 on February 7th, 1921.
1921:		
May 13th	$1.75	
August 3rd	1.50	
1922:		
July 15th	$1.25	
August 8th	1.00	
1924:		
January 22nd	$1.25	
February 5th	1.40	

1925:		
February 4th ...	$1.65	Standard.
	1.65	Associated.
	1.40	Shell—Price increased to $1.65 on February 11th.
	1.40	Union—Price increased to $1.55 on February 7th plus 5¢ barging.
May 16th	1.55	Standard, Associated, Shell & Union.
August 29th	1.25	
October 27th	1.04	This price unchanged to date.

NOTE.—For deliveries by barge in the Bay an additional charge was made, rate depending upon quantity delivered. Companies gradually began absorbing barging charge in 1925 and eventually barging charge was discotninued (About October, 1925).

[fol. 805] (P. 2 of 2 pp.)

Barging Schedule

January 1, 1920.—2¢ per barrel plus $20.00 for each delivery.

November 21, 1923.—Points between Antioch and South San Francisco:

Lots of 100 to 499	Barrels—	8¢	per barrel.
Lots of 500 to 2,499	"	6¢	" "
Lots of 2,500 or over		5¢	" "

When the Buyer is responsible for delay, demurrage after the first thirty minutes delay to be at the rate of $15.00 per hour.

NOTE.—This schedule is still in effect but no charge for barging is made at the present time.

[fol. 806] Thereupon H. E. COLE was called as a witness on behalf of the complainant and, having been duly sworn, testified as follows:

I am Traffic Manager for California Fruit Exchange which is a non-profit corporation engaged in the marketing of deciduous fruits for its members, and is a mutual company.

In 1926 the volume of deciduous fruit shipped by California Fruit Exchange from California to transcontinental destinations was 12,000 cars, fifty percent of which were grapes.

During the season of 1914 there was no shortage of refrigerator cars in California. There was a very slight shortage for a day or so in 1915. In 1916 on account of congestion in the east there was a car shortage. After August 1, 1917, there was a serious car shortage.

Thereupon M. E. McKIRAHAN was called as a witness on behalf of complainant and, having been duly sworn, testified as follows:

I am Traffic Manager of the California Fruit Distributors, which is a non-profit organization, organized under the laws of the State of California to distribute and market deciduous fruits.

We shipped over 16,000 cars of deciduous fruit in 1926. When cars are loaded and bill of lading issued the documents are delivered by the member to the California Fruit Distributors which takes charge of the car and sells it.

I am in charge of reconsignments and diversions. I have had twenty odd years of railroad experience.

East of Council Bluffs deciduous fruit traffic is distributed between the Chicago & Northwestern, Chicago, Milwaukee & St. Paul and Illinois Central Railroads. This distribution is the result of solicitation of these lines. The routing of the fruit shipments easterly from Chicago is governed by the location of facilities where the shipments are sold.

[fol. 807] Reconsignments and diversions of shipments of deciduous fruit are affected by embargoes of which five were issued by five different roads during August 1925, and seven September 1925. In August there were nine in the aggregate issued by lines east of Chicago.

When embargoes are issued a permit must be obtained from the carrier issuing the embargo before the cars can be placed at embargo points. This results in a large number of diversions on the part of the shippers or receivers, because in order to obtain a permit it is necessary that the cars be en route in order that the carrier may be furnished with the necessary information. The declaration of the embargo in conjunction with this permit system appreciably increases the number of diversions and reconsignments.

Within the past two years there has been an appreciable reduction in the claims filed and paid upon fruit shipments of California deciduous fruits. In 1920 the total claims paid by carriers to the California Fruit Distributors was $307,134.00; in 1921 there was an increase in shipments of 11,461 cars and the total payments were $470,598.00; in 1925 16,695 cars were shipped and the total claims paid to California Fruit Distributors in that year was $172,181.00; in 1926 we shipped 16,102 cars and the total claims made during that calendar year were $160,548.00.

This shows a reduction from $30.00 per car in 1920 to something like $10.00 per car in 1926. For the years 1922, 1923 and 1924, by reason of strike conditions, the claim payments were decidedly higher.

In 1922 we shipped 12,355 cars and the claims paid were $122,554.11. In 1923, 16,128 cars were shipped and the claim payments amounted to $554,121.00. In 1924, 13,779 cars were shipped and the claim payments amounted to $354,972.

[fol. 808] The 1926 figures for loss and damage payments on shipments of deciduous fruit represent payments collected in that year. We have adjusted more than one-third of the claims on the 1926 shipments.

The decline in the amounts of claims paid per car between 1920 and 1926 are caused, I believe, by several factors, the most prominent of which are the maintenance of schedules agreed upon and the work performed by the carriers at points of origin in instructions to shippers upon methods of loading, and the efforts on the part of shippers to improve their containers.

Cross-examination:

The usual reason assigned for an embargo is anticipated congestion in the terminals, which is caused by inadequacy

of the terminal facilities at a given time for the traffic that is offered. The embargoes are due to the fact that more traffic is offered than the terminals can handle.

Thereupon V. S. ANDRUS was recalled as a witness and testified further as follows:

The banana schedule between El Paso and Yuma is 32 hours, which figures approximately 18 miles per hour. Merchandise schedule, which is not perishable freight, is 51 hours, or a speed of about 11 miles per hour. The banana trains, moving either to Phoenix, Tucson or Douglass, develop an average speed per hour ranging from 14.8 to 20.4 miles per hour.

[fol. 809] The average weight per car of bananas shipped from New Orleans to California destinations is 21,600 pounds; the total movement of bananas from, to or between points served by the Southern Pacific lines was 5,064 carloads, and the average weight per car was 21,500 pounds.

The relation of the paying load to the gross weight handled upon the banana traffic is 30.9 per cent; upon deciduous fruits except grapes and apples, 35.5 per cent; upon grapes, 37.8 per cent; upon deciduous fruit, excluding apples, 37.5 per cent.

Bananas destined to Arizona and New Mexico show for the year 1925 that the average loading is 10.64 tons and they utilized but 35.48 per cent of the available car capacity. The corresponding system figure for the perishable movement in refrigerator cars, including also the bananas, was 44.9 per cent.

Mr. Matthew: I want to refer to Exhibit Number 4 in this same case, introduced through the witness Bordelon, for the Southern Pacific Company, showing the amount of terminal expenses at the port of New Orleans, Louisiana, on bananas in carloads moving by the T. & P. Railway for the year 1924. The copy of the exhibit proceeds to recite that these expenses are absorbed out of tariff rates on this traffic.

May I say, Mr. Examiner, this Exhibit 4 shows that various operating expenses are absorbed by the Texas & Pacific Railroad on bananas moving from New Orleans, including wharfage, slatting, switching, loading, cases, cost of ice, and false floors, amounting to an average per car of $19,825, in addition to which it appears from a note on the exhibit that, commencing July 1st, 1925, tollage will be absorbed equal to $1 per car, would likewise be absorbed. Now I desire to offer, if the Examiner please, a copy of Exhibit [fol. 810] Number 27 received in evidence in this case, offered through the witness, Mr. Bradshaw, by the Southern Pacific Company. I may explain that this copy was very hastily prepared and the mimeographer has entirely made it our exhibit, without giving due credit for its origin.

Thereupon said copy of Exhibit 27 in Docket No. 18271 was offered and admitted in evidence and marked Plaintiff's Exhibit No. 256 and is in the following form:

(Here follows Complainant's Exhibit No. 256, marked side folio page 811)

[fol. 812] Mr. Matthew: It appears upon page 70 of the transcript of the hearing in Docket 18271, testimony given by the witness C. D. Bordelon, Chief Commerce Clerk of the Southern Pacific's Louisiana Lines, at New Orleans, that upon the arrival of the vessels at New Orleans the bananas must be promptly unloaded and shipments tendered the individual lines of railway—must be moved promptly. This makes it necessary for the carriers to have on hand at all times a sufficient amount of empty equipment to handle this traffic, banana traffic.

It is there stated that the Southern Pacific Lines maintain at Algiers at all times a large supply of cars for the banana service. These are refrigerator cars. The equipment at Algiers is partly composed of refrigerator cars made empty at New Orleans, but the main supply is brought in empty from Texas, particularly Houston. As often as twice a month it is necessary to bring in a trainload of refrigerator cars all the way from Houston, a distance of 362 miles.

[fol. 811]

COMPLAINANT'S EXHIBIT No. 256

Witness: Matthew

BEFORE THE INTERSTATE COMMERCE COMMISSION

CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

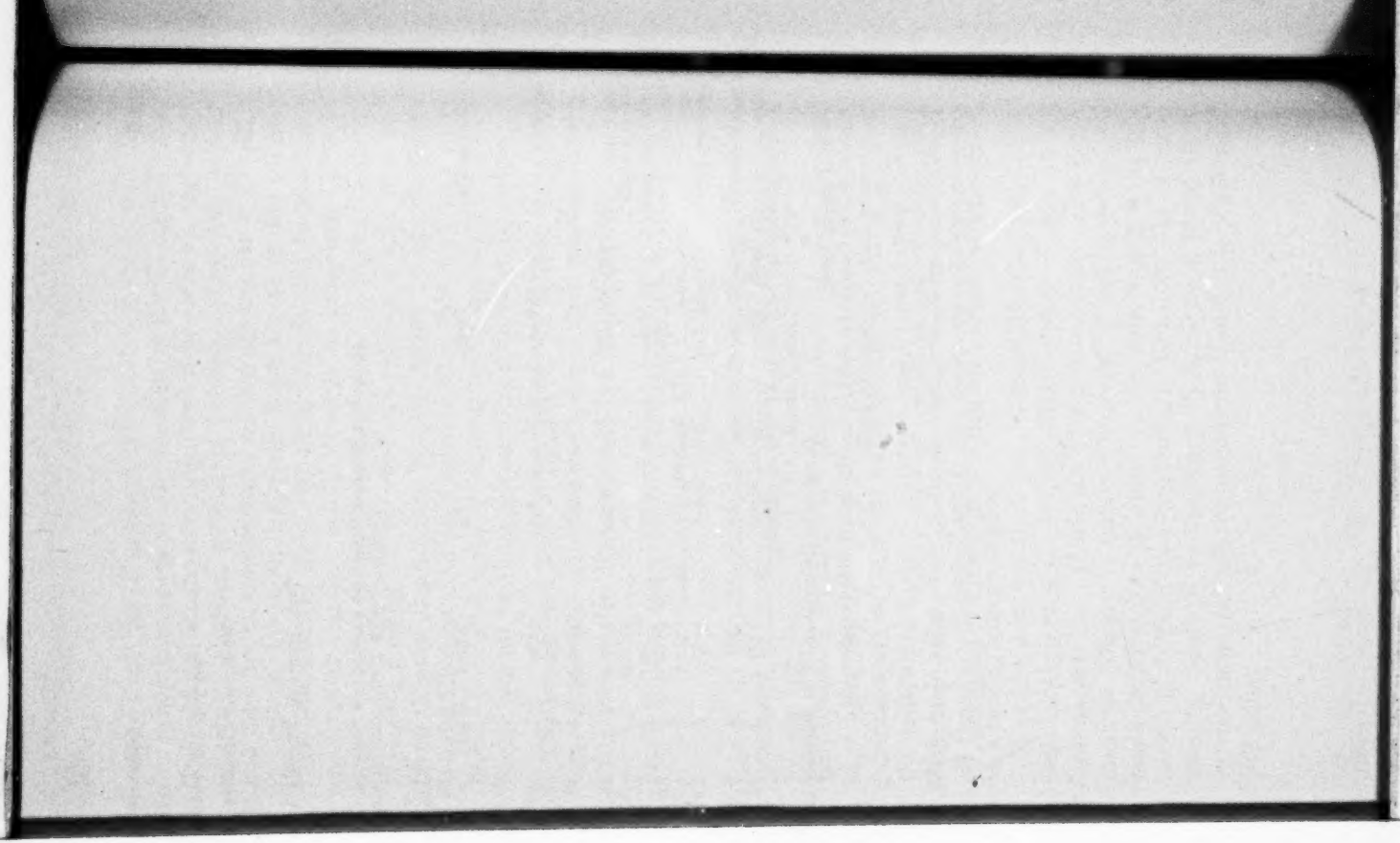
Docket 19130

Statement Showing Rates and Earnings on Bananas, Carloads from New Orleans, La., to Phoenix, Ariz., and Tucson, Ariz., Compared with Rates and Earnings on Other Traffic for Similar Distant Hauls

Commodity	From	To	Miles	Route	Rate per 100 lbs., cents	Minimum weight (lbs.)	Average loading (lbs.)	Gross weight (lbs.)	Average revenue (dollars)	Ton mi. revenue (mills) Wt.	Ton mi. revenue (mills) Gr.	Car mi. revenue (cents)	Tariff authority Item	Issued by	R. R. No.	I. C. C. No.
					Rates Complained Of											
Bananas	New Orleans, La.	Phoenix, Ariz.	1626	1	187½	20,000	21,500	69,500	403.13	23.1	7.1	24.8	2650	H.G. Toll	1-Z	1166
"	"	Tucson, "	1505	1	187½	20,000	21,500	69,500	392.38	24.2	7.5	26.1	7565-A	"	1-Z	1166
"	"	Pacific Coast	2151-A	1	187½	20,000	21,500	69,500	403.13	17.4	5.4	18.7	2650	"	1-Z	1166
					Comparisons											
Fruit, Citrus	Phoenix, Ariz.	Eastern Points	1927-B	..	155	36,000	.....	84,000	558.00	16.1	6.9	29.0	4110	"	3-U	1174
Fruit, Deciduous	" "	" "	1770-B	..	173	26,000	28,400	76,400	491.32	19.5	7.3	27.7	1945	"	3-U	1174
Butter, eggs, poultry	Butte, Mont.	San Francisco	1179	2	171	24,000	27,600	75,600	471.96	29.0	10.7	40.0	1543-B F	G$	2-F	764
Butter, eggs, poultry	Billings, Mont.	" "	1415	3	225	24,000	27,600	75,600	621.00	31.8	11.8	43.9	1545-B	"	2-F	764
Lettuce	Arizona	East Pts. Group E-10.	1253-C	..	146	20,000	22,600	70,600	329.96	23.3	7.5	26.3	3510	H.G. Toll	3-U	1174
Vegetables, Fresh	Phoenix, Ariz.	Butte, Mont.	1547	4	206½	20,000	20,600	68,600	425.39	26.7	8.0	27.5	" F	G$	26-M	831
													F	G$	58-F	767
Honey, Comb	Phoenix, Ariz.	St. Louis, Mo.	1658	5	275	30,000	39,578	87,578	1088.40	33.2	14.9	65.6	2245	Toll	3-U	1174
Grapes	Lodi, Cal.	Butte, Mont.	1121	2	162	26,000	29,200	77,200	461.04	28.9	10.9	41.1	.. F	G$	58-F	767

A—Average weighted haul under $1.87½ on bananas.
B— " " " from Arizona.
C— " " " " " to points in Group D and E as described in T.C.F.B. Eastbound Tariff.
$F. W. Gomph, Agent.
Southern Pacific Company—Pacific Lines, Freight Traffic Department.
San Francisco, Calif, November 24, 1926.

Routes:
1. Southern Pacific Lines.
2. Southern Pacific Company, Ogden, Utah—Union Pacific.
3. Southern Pacific Company, Ogden, Utah—Union Pacific, Butte, Mont., Northern Pacific.
4. Southern Pacific Company, Colton, Cal., Union Pacific.
5. Southern Pacific Company, Tuscumcari, N. M., C.R.I. & P. Kansas City, Mo.—Wabash.



Upon pages 74 and 75 of the transcript of this hearing, again through the testimony of the witness Bordelon, there is a summary of the allowance and absorption made by the Southern Pacific Company in connection with the banana movement.

From New Orleans it is substantially identical with the showing made in the exhibit covering the operations of the Texas & Pacific Railway, to which I have previously referred. It is stated by Mr. Bordelon, on page 75 of the transcript, that the record of absorptions by the Southern [fol. 813] Pacific Railway was made at Mr. Bordelon's request.

I think I am correct in understanding that the Southern Pacific's absorptions are identical of those of the Texas & Pacific?

Mr. Lyons: Yes, I think that is correct.

Mr. Matthew: Upon pages 78 and 79 of the transcript Mr. Bordelon testifies, respecting the free transportation given to banana messengers, and the statement is made upon 80 of the transcript that some 1,712 banana messengers were given free transportation from El Paso easterly during the single year covered by Exhibit Number 7, and that if revenue had been received for the transportation of these 1,712 messengers, the carrier would have earned $78,725.76.

I find that I was in error there in saying that the 1,712 messengers received this transportation in a single year. The fact is, as shown by Exhibit Number 7, that the statement covers a period of four years and six months, that is, from 1922 to and including the first six months of 1926.

Thereupon H. M. Remington was recalled as a witness for the complainants and testified further as follows:

I have prepared a brief summary of the amount of shrinkage per car and in the aggregate which would be borne by the principal participating carriers if the rates demanded by the complainants should be fixed in this case.

I have taken the actual average revenue per car of $489.42 as indicated in the Witness Fielding's Exhibit 166 for the year 1926. I have taken an indicated revenue per

[fol. 814] car on an average weight of 30,000 pounds, at $1.44, which gives an indicated revenue of $432.00, and an indicated shrinkage per car arrived at by deducting the $432.00 from $489.42, or $57.42 per car. I have distributed this shrinkage first on a per car basis, taking the Santa Fe traffic, and allowing the lines east of Chicago 16.5 per cent. I arrive at a shrinkage of $9.47 for those lines. I have allocated against the Santa Fe and its California connections 83.5 per cent on a shrinkage of $47.95 per car.

On the Southern Pacific, Western Pacific, Los Angeles & Salt Lake traffic, and that originated by their California connections, I have likewise allowed the lines east of Chicago 16.5 per cent, or $9.47 shrinkage per car.

For the Missouri River lines I have allocated 16.5 per cent of the remainder, or a shrinkage of $7.91 per car. For the Union Pacific and their lines operating between the outer gateways and the Missouri River crossings, I have allowed 5.4 per cent of the remainder, or $21.62 per car.

For the Southern Pacific and Western Pacific and Los Angeles and Salt Lake Railroad, together with their California connections, I have allowed 46 per cent of the proportion west of the Missouri River, $18.42 per car.

I have assumed the traffic is moved for an average weighted haul 2,900 miles.

For the lines east of Chicago, and taking 76,000 cars at 9.47, the indicated shrinkage is $719,720.00 for the Missouri River lines.

Excluding the Santa Fe and using 56,000 cars at $7.91, [fol. 815] the indicated shrinkage is $442,960.00. For the Union Pacific and their lines between the Ogden gateways and Missouri River crossings, again using 56,000 cars at $21.62 per car, the indicated shrinkage is $1,210,720.00.

For the Southern Pacific and its California connecting lines, using 45,000 cars at a shrinkage of $18.42 per car, the indicated shrinkage is $828,900.00.

For the Western Pacific and its California connections, using 10,000 cars, the indicated shrinkage is $184,200.00.

For the Los Angeles & Salt Lake Railway, using 1,000 cars, the shrinkage is $18,420.

For the Santa Fe, using 20,000 cars, as moving directly to Chicago, an indicated shrinkage of $47.95 per car, the total revenue shrinkage is $959,000.

This makes an aggregate revenue shrinkage of $4,363,920.00.

Cross-examination:

The total shipments, according to Mr. Fielding's Exhibit 166, of all deciduous fruits except apples, is 74,456 carloads. The average shrinkage per car, taking the carriers as a whole, would be $57.42. That is based upon the average loading of 28,306 pounds.

Under date of April 8, 1927, subsequently to the close of the hearing, the Southern Pacific Company furnished the following information as to the cost and consumption of fuel oil and coal for the years 1920 and 1926:

	1920	1926
Tons of coal consumed by locomotives	None used	459,529.00
Barrels of fuel oil consumed by locomotives	13,795,747.00	13,392,330.00
Average cost of coal per ton		2.91
Average cost of fuel oil per barrel	1.71	1.07
Amounts charged in Accounts:		
Account 382—Fuel for yard locomotives	$ 2,444,714.65	$ 1,870,001.24
Account 392—Fuel for train locomotives	21,100,283.35	13,782,692.93
Total	$23,544,998.00	$15,652,694.17

The average cost of coal and fuel oil represents invoice price plus freight charges and cost of handling to locomotive tenders.

The following statements with respect to fuel costs for 1920 and 1926 were submitted on April 20, 1927, and May 3, 1927, respectively, by The Atchison, Topeka and Santa Fe Railway Company:

Filed on Request of Complainants in Docket No. 19130

The Atchison, Topeka and Santa Fe Railway Company

System Statement of Fuel Costs, Year 1920

	No. of tons	No. of gallons	Cost as charged to operating expenses	Average cost per ton or gallon
Coal	3,067,416		$11,877,326.71	$3.87
Fuel Oil		385,673,284	16,594,148.48	4.277c
Total cost of Fuel Used in Operation			28,372,475.19	

[fol. 817] Filed on Request of Complainants in Docket No. 19130

The Atchison, Topeka and Santa Fe Railway Company System

Statement of Fuel Cost, Year 1926

	No. tons	No. gallons	Cost as charged to operating expenses	Average cost per ton or gallon
Coal	2,118,061		7,137,587.66	3.37
Fuel Oil		474,998,037	15,466,528.65	3.256c
Total cost of Fuel used in operations			22,604,116.31	

On April 11, 1927, the following statements were submitted by the Union Pacific System:

Los Angeles & Salt Lake Railroad Company

Statement Showing Number of Tons of Coal and Barrels of Fuel Oil Consumed in Total Transportation Service, Also the Average Cost per Ton of Coal and per Barrel of Fuel Oil and Total Charges to Account 382, "Fuel for Yard Locomotives," and 392, "Fuel for Train Locomotives," for the Years 1920 and 1926, to be Used in Connection with Transcontinental Deciduous Fruit Case, U. C. C. Docket No. 1913

	Year 1920	Year 1926
Tons of Coal consumed	160,476	
Barrels of Fuel Oil consumed	813,364	1,756,428
Average cost per ton of Coal (dollars)	4.73	
Average cost per barrel Fuel Oil (dollars)	1.81	.81
Account 382, Fuel for Yard locomotives	154,947.70	119,994.56
Account 394, Fuel for Train locomotives	2,076,930.16	1,306,412.20

[fol. 818] Union Pacific Railroad Company

Statement Showing Number of Tons of Coal and Barrels of Fuel Oil Consumed in Total Transportation Service, Also the Average Cost per Ton of Coal and per Barrel of Fuel Oil and Total Charges to Account 382 "Fuel for Yard Locomotives" and 394 "Fuel for Train Locomotives" for the Years 1920 and 1926 to be Used in Connection With Transcontinental Deciduous Fruit Case I. C. C. Docket No. 1913

	Year 1920	Year 1926
Tons of Coal Consumed	3,167,057	2,456,968
Barrels of Fuel Oil consumed	15,247	27,940
Average cost per ton of Coal (dollars)	3.21	2.85
Average cost per barrel Fuel Oil (dollars)	3.29	1.35
Account 382, Fuel for Yard Locomotives	925,647.91	677,720.68
Account 394, Fuel for Train Locomotives	9,421,923.44	6,570,155.12

[fols. 819 & 820] The Report and Order of the Interstate Commerce Commission in this proceeding were filed and entered on July 20. Said Report and Order are in the following form:

"Said Order and Report are set out in full in the Petition and Bill for Injunction of the Petitioners and Appellants, the said order appearing at page No. 4, herein, and said report appearing at pages Nos. 15 to 45 herein."

[fol. 821] BEFORE THE INTERSTATE COMMERCE COMMISSION

PETITION FOR RECONSIDERATION UPON THE RECORD AS MADE OF COMMISSION'S DECISION OF JULY 20, 1927, 129 I. C. C., 25

To the Honorable Interstate Commerce Commission:

The carriers defendants in the above entitled proceeding respectfully petition your honorable body to reopen the same, upon the record as made, for the purpose of reconsideration of the decision rendered herein on the twentieth day of July, 1927, reported 129 I. C. C., 25.

Respectfully submitted.

James S. Moore, Jr., J. E. Lyons, G. H. Muckley, E. E. Bennett, H. A. Scandrett, P. F. Gault, J. N. Davis, M. B. Pierce, A. B. Enoch, E. A. Smith, E. W. Camp, Platt Kent, F. E. Andrews, R. S. Outlaw, Elmer Westlake, Attorneys for Petitioners.

[fol. 822] BEFORE THE INTERSTATE COMMERCE COMMISSION

PETITION FOR POSTPONEMENT OF THE EFFECTIVE DATE OF THE COMMISSION'S ORDER OF JULY 20, 1927

To the Honorable the Interstate Commerce Commission:

The carriers defendant in the above entitled proceeding respectfully represent that concurrently herewith they are filing a petition for reconsideration by the Commission of the above proceeding upon the record as made therein, the grounds of which petition are fully set forth therein; that your your petitioners are fully convinced that the Commission's decision in this case is against the evidence and contrary to law, and if enforced will deprive the carriers defendant of their property without due process of law and will take from them their private property for public use without just compensation in violation of the Fifth Amendment to the Constitution of the United States; that they believe that it is in the interests of all, including the Commission, the shippers and receivers of deciduous fruit,

and of all other commodities directly or indirectly involved, and of the carriers, that in the event said petition for reconsideration be denied, there be an authoritative determination of the constitutionality of the so-called Hoch-Smith Resolution, if given the interpretation placed upon it by the Commission in its decision in Docket 19130. Your petitioners therefore respectfully state that in the event said [fol. 823] petition for reconsideration be not granted, and the decision of the Commission herein is set aside and vacated, your petitioners intend filing a bill in equity to enjoin the enforcement of the Commission's order in said docket, and to secure from a court of competent and final authority an authoritative determination of the issues involved.

Your petitioners further allege that the order of the Commission in Docket 19130 is to become effective October 10, 1927, upon fifteen days' notice; that the expense of printing the tariffs and disseminating them is large and should not be needlessly incurred, and the Commission should therefore postpone the effective date of its order herein for a reasonable time, not less than sixty days, in order that the Commission may have time to properly consider the petition for reconsideration herein, and in the event the same be denied, to permit the carriers to file a bill in equity and give to the Government and the parties interested adequate time for the presentation thereof, or opposition thereto.

Wherefore your petitioners pray that the Commission make and enter its order herein postponing the effective date of the Commission's order in Docket 19130 for not less than sixty days, or for such other reasonable time as to the Commission may seem proper in the premises; and for such other relief as may be proper.

Respectfully submitted.

[fol. 824] James S. Moore, Jr., J. E. Lyons, G. H. Muckley, E. E. Bennett, H. A. Scandrett, P. F. Gault, J. N. Davis, M. B. Pierce, A. B. Enoch, E. A. Smith, E. W. Camp, Platt Kent, F. E. Andrews, R. S. Outlaw, Elmer Westlake, Attorneys for Petitioners.

[fol. 825] BEFORE THE INTERSTATE COMMERCE COMMISSION

At a general session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 19th Day of September, A. D. 1927.

ORDER POSTPONING EFFECTIVE DATE OF ORDER

Upon further consideration of the record in the above-entitled proceeding, and of the petition of defendants for postponement of the effective date of the order heretofore entered in this case dated July 20, 1927;

It is ordered, That the effective date of said order of July 20, 1927, be, and it is hereby postponed until November 10, 1927,

And it is further ordered, That in all other respects the said order shall remain in full force and effect.

By the commission.

George B. McGinty, Secretary. (Seal.)

[fol. 826] BEFORE THE INTERSTATE COMMERCE COMMISSION

APPLICATION FOR MODIFICATION OF COMMISSION'S ORDER OF JULY 20, 1927

To the Honorable Interstate Commerce Commission:

Now come the Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Milwaukee & St. Paul Railway Company, Spokane, Portland & Seattle Railway Company, and Oregon-Washington Railroad & Navigation Company, defendants in the above proceeding, and respectfully petition the Commission to modify its order herein of July 20, 1927, by eliminating therefrom the requirement that the rates on deciduous fruits, in carloads, from points in California to points in Groups A to M, inclusive, be reduced when the movement is via North Pacific Coast gateways; provided the order is construed to make such requirement; and in support of this application respectfully show:

(1) The Great Northern Railway Company, Northern Pacific Railway Company and Spokane, Portland & Seattle Railway Company—hereafter referred to as the "Northern Lines"— are parties to all-rail rates on deciduous fruits, in carloads, from points in northern California (San Francisco, Stockton and north) to groups A to M, applying through the North Pacific Coast gateways of Portland and Seattle. The rates via these gateways are higher than the rates between the same points when the movement is via [fol. 827] the direct lines from California, for example the Southern Pacific Company. Shipments from California to Groups A to M, except J, via the Northern Lines through the North Pacific Coast gateways pass through territories served by the Northern Lines where deciduous fruits are produced and shipped, for example, Wenatchee and Yakima, Washington, so that under the long and short haul clause of the Fourth Section of the Interstate Commerce Act the Northern Lines are not permitted to carry lower rates on deciduous fruits from California to Groups A to M via the North Pacific Coast gateways than they carry to the same destinations from their own producing territories in the states of Washington and Oregon.

(2) The record in this proceeding, applicants believe, does not show the rates from California via the North Pacific Coast gateways nor is there any evidence in the record with respect to them, but the wording of the Commission's order of July 20, 1927, may be construed as requiring the rates on deciduous fruits from California through the North Pacific Coast gateways, as well as the rates via the direct routes, to be reduced to $1.50 to Group J points and to $1.60 to Group A to M except J. If the order is so construed a compliance therewith by the Northern Lines will result in lower rates on deciduous fruits from northern California than on the same commodities to the same destinations from the intermediate fruit territory served by the Northern Lines in the states of Washington and Oregon, and will result in a violation of the long and short haul clause of the Fourth Section unless they simul- [fol. 828] taneously reduce their rates on deciduous fruits from Washington and Oregon to the level of those prescribed by the Commission from California.

(3) The rates and situation referred to above are shown by the rate statement attached to this application, the rates being taken from the current tariffs (Transcontinental Eastbound Freight Tariff No. 3-V, H. G. Toll's I. C. C. No. 1182, and Transcontinental Eastbound Freight Tariff No. 2-V, H. C. Toll's I. C. C. No. 1186).

(4) As a matter of information, the Northern Lines are parties also to joint rates on deciduous fruits from San Francisco via certain steamship lines to points in Groups A to M, except J, via Portland and Seattle, which rates are the same as the all-rail rates from California via the North Pacific Coast gateways except on grapes, but the Commission's order of July 20, 1927, does not run against any of the steamship lines parties to those rates and the Northern Lines therefore construe the Commission's order as not applying to any rates to which the steamship companies are parties.

(5) Very few, if any, shipments of deciduous fruits from California have moved via the North Pacific Coast gateways to destinations in Groups A to M, but there has been some movement to destinations west of Groups A to M, so that the rates from California via the North Pacific Coast gateways are practically paper rates. On the other hand, the rates of the Northern Lines from the states of Wash- [fol. 829] ington and Oregon which it would be necessary to reduce to observe the Fourth Section if the Northern Lines are required to reduce the rates from California, move a large tonnage. The Great Northern alone originated approximately 1,350 carloads of deciduous fruits in the Wenatchee Valley and points taking the Seattle and Portland rates during the year 1926, approximately 80% of which were destined to groups A to M.

6. While the Chicago, Milwaukee & St. Paul Railway Company and the Oregon-Washington Railroad & Navigation Company are not parties to rates from California via the North Pacific Coast gateways to points in Groups A to M, they serve some of the fruit producing territories in Washington and Oregon served by the Northern Lines, and if the latter are required to reduce their rates on deciduous fruits from Washington and Oregon the Chicago, Milwaukee & St. Paul Railway Company and the Oregon-

Washington Railroad & Navigation Company would have higher rates in effect than would be charged by the Northern Lines from the same territory.

7. If the Commission intended by its order to require a reduction in the rates from California applying via the North Pacific Coast gateways these applicants believe that in issuing its order the Commission was not aware of the fact that it would operate to reduce the rates from Washington and Oregon which are not in issue in this proceeding. If any changes are to be made in the deciduous fruit [fol. 830] rates from Washington and Oregon, which are the important rates to the Northern Lines, they should be made only after hearing and after the rates have been considered on their merits.

Wherefore, applicants Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Milwaukee & St. Paul Railway Company, Spokane, Portland & Seattle Railway Company, and Oregon-Washington Railroad & Navigation Company respectfully petition the Commission, in case it construes its order as affecting the rates via the North Pacific Coast gateways, to modify its order of July 20, 1927, by excepting therefrom the rates on deciduous fruits in carloads, from California to points in Groups A to M, inclusive, when the movement is via the North Pacific Coast gateways.

If this application is denied applicants pray that the order be stayed insofar as it affects the rates applicable via the North Pacific Coast gateways and that the proceeding be reopened for further hearing with respect to such rates, or that the Commission grant applicants any other or further relief which it deems equitable.

Dated this 28th day of September, 1927.

Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Milwaukee & St. Paul Railway Company, Spokane, Portland & Seattle Railway Company, Oregon-Washington Railroad & Navigation Company, by M. L. Countryman, Jr., J. N. Davis, H. A. Scandrett, R. J. Hagman, their Attorneys.

[fol. 831]

To	Deciduous Fruits, C. L., from California via Omaha		Deciduous Fruits, C. L., from California via Portland		Deciduous Fruits, C. L., from Other than pears		Deciduous Fruits, C. L., from Pears	
	Present	Ordered	Present	Ordered	Seattle & Portland	Wenatchee, Yakima and Hood River	Seattle & Portland	Wenatchee, Yakima, and Hood River
New York, N. Y.	1.73	1.60	*1.87½	1.60	1.87½	1.87½	†1.87½	1.73
Buffalo, N. Y.	1.73	1.60	*1.87½	1.60	1.87½	1.87½	1.73	1.73
Detroit, Mich.	1.73	1.60	*1.87½	1.60	1.87½	1.87½	1.73	1.73
Chicago, Ill.	1.73	1.60	*1.87½	1.60	1.87½	1.87½	1.73	1.73
St. Paul, Minn.	1.73	1.60	*1.87½	1.60	1.87½	1.60	1.73	1.60

* Rates from California via North Pacific Coast gateways applicable only from San Francisco and Stockton and points north.

† Steps being taken to reduce this rate to $1.73.

[fols. 832-835] BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER OF MODIFICATION

Upon further consideration of the record in the above entitled proceeding and of the petition filed October 1, 1927, by Great Northern Railway Company and other defendants for modification of the order o fJuly 20, 1927;

It is ordered, That the order heretofore entered in this proceeding dated July 20, 1927, which was by its terms effective October 10, 1927, and which was modified by order dated September 19, 1927, so as to become effective November 10, 1927, be and it is hereby, further modified so as to become effective December 10, 1927.

It is further ordered, That the said order of July 20, 1927, be, and it is hereby, further modified by inserting after the word "transportation," in both the second and third paragraphs of said order the words, "except over routes via north Pacific coast gateways."

And it is further ordered, That in all other respects the said order shall remain in full force and effect.

By the Commission:

George B. McGinty, Secretary. (Seal.)

"Said Report of the Interstate Commerce Commission on further consideration is set out in full in the Petition and Bill for Injunction of the petitioners and appellants appearing at pages 46 to 48 herein."

[fol. 836] BEFORE INTERSTATE COMMERCE COMMISSION

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 22nd day of November, A. D. 1927.

[Title omitted]

ORDER POSTPONING EFFECTIVE DATE OF ORDER

Upon further consideration of the record in the above-entitled proceeding, and good cause appearing therefor:

It is ordered, That the order heretofore entered in this proceeding dated July 20, 1927, which was by its terms effective October 10, 1927, and which was subsequently modified by orders dated September 19, 1927, and October 14, 1927, so as to become effective December 10, 1927, be, and it is hereby, further modified so as to become effective January 10, 1928.

And it is further ordered, That in all other respects the said order shall remain in full force and effect.

By the commission.

George B. McGinty, Secretary. (Seal.)

[fol. 837] BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER POSTPONING EFFECTIVE DATE OF ORDER

Upon further consideration of the record in the above-entitled proceeding, and good cause appearing therefor:

It is ordered, That the order heretofore entered in this proceeding dated July 20, 1927, which was by its terms effective October 10, 1927, and which was subsequently modified by orders dated September 19, October 14, and November 22, 1927, so as to become effective January 10, 1928, be, and it is hereby, further modified so as to become effective February 10, 1928.

And it is further ordered, That in all other respects the said order shall remain in full force and effect.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fols. 838 & 839] Secretary's certificate to foregoing transcript omitted in printing.

[fol. 840] OFFERS IN EVIDENCE

Petitioners thereupon offered and there was admitted in evidence an Order of the Interstate Commerce Commission dated March 12, 1925, in that certain proceding before it entitled "No. 17,000, Rate Structure Investigation," which said Order is in the following form:

[fol. 841] Order

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 12th Day of March, A. D. 1925

No. 17000

Rate Structure Investigation

In the Matter of Adjustments in the Rate Structure of Common Carriers Subject to the Interstate Commerce Act and the Fixing of Rates and Charges

It appearing, That by joint resolution of the Congress approved January 30, 1925, the commission is authorized and directed to make a thorough investigation of the rate structure of common carriers subject to the interstate commerce act, as follows:

[Public Resolution No. 46, 68th Congress]

[S. J. Res. 107]

Joint Resolution Directing the Interstate Commerce Commission to Take Action Relative to Adjustments in the Rate Structure of Common Carriers Subject to the Interstate Commerce Act and the Fixing of Rates and Charges.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared to be the true policy in rate making to be pursued by the Interstate Commerce Commission in adjusting freight rates, that the conditions which at any given time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move.

That the Interstate Commerce Commission is authorized and directed to make a thorough investigation of the rate structure of common carriers subject to the interstate commerce act, in order to determine to what extent and in what manner existing rates and charges may be unjust, unreasonable, unjustly discriminatory, or unduly preferential, thereby imposing undue burdens, or giving undue advantage as between the various localities and parts of the country, the various classes of traffic, and the various classes and kinds of commodities, and to make, in accordance with law, such changes, adjustments, and redistribution of rates and charges as may be found necessary to correct any defects so found to exist. In making any such change, adjustment, or redistribution the commission shall give due regard, among other factors, to the general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years to a natural and proper development of the country as a whole, and to the maintenance of an adequate system of transportation. In the progress of such investigation the commission shall, from time to time, and as expeditiously as possible, make such decisions and orders as it may find to be necessary or appropriate upon the record then made in order to place the rates upon designated classes of traffic upon a just and reasonable basis with relation to other rates. Such investigation shall be conducted with due regard to other investigations or proceedings affecting rate adjustments which may be pending before the commission.

In view of the existing depression in agriculture, the commission is hereby directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service: Provided, That no investigation or proceeding resulting from the adoption of this resolution shall be permitted to delay the decision of cases now pending before the commission involving rates on products of

agriculture, and that such cases shall be decided in accordance with this resolution.

Approved, January 30, 1925.

It is ordered, That an investigation of the rate structure of common carriers subject to the interstate commerce act be, and it is hereby, instituted by the commission in order to:

(a) Determine to what extent and in what manner, if any, rates, fares, and charges, and all classifications, regulations, and practices relating thereto, hereinafter for brevity collectively termed rates, of such common carriers for or [fol. 841a] in respect of the transportation or transmission by such carriers in interstate or foreign commerce of the various classes and kinds of commodities and the various classes of traffic, including freight, passenger, mail, and express, or any other, similar or dissimilar, may be unjust, unreasonable, unjustly discriminatory, unduly preferential, or otherwise in violation of any provision of law, including the joint resolution aforesaid.

(b) Determine to what extent and in what manner, if any, the rates, as above defined, of such common carriers cause undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce.

(c) Make, in accordance with law, such changes, adjustments, and redistribution of rates, as above defined, as may be found necessary to correct any defects so found to exist, and to determine to what extent, if any, and upon what classes and kinds of commodities or classes of traffic, if any, compensating increases or other changes in rates, as above defined, may and shall lawfully be required or authorized by the commission in order to offset or partially offset such reductions or other changes in rates, as above defined, on other classes or kinds of commodities or classes of traffic, giving due regard, among other factors, to—

(1) The conditions which prevail in the several industries of the country, in so far as it is legally possible to do so, to the end that commodities may freely move;

(2) The general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years;

(3) A natural and proper development of the country as a whole;

(4) The maintenance of an adequate system of transportation;

(5) Any other requirement of law laid upon the commission in respect of the initiation, modification, establishment, or adjustment of rates, as above defined.

(d) Make in the progress of the investigation such decisions and orders as the commission may find necessary or appropriate upon the record then made in order to place the rates upon designated classes or kinds of commodities or classes of traffic upon a just and reasonable basis with relation to other rates.

(e) Effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by the existing depression declared in said joint resolution, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service.

It is further ordered, That all common carriers subject to the interstate commerce act be, and they are hereby, made respondents to this proceeding; that this order be served upon each of said respondents; that the several States of the United States be notified of this proceeding by sending copies of this order by registered mail to the governor of each State, as well as to the tribunal thereof, if any, having regulatory jurisdiction over such common carriers; that copies of this order be sent to the heads of the executive departments of the United States; and that notice of this proceeding be given to the public by depositing a copy of this order in the office of the secretary of the commission, at Washington, D. C.

And it is further ordered, That this proceeding be assigned for hearing at such times and places as the commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 841b] INTERSTATE COMMERCE COMMISSION

No. 17000

Rate Structure Investigation

In the Matter of Adjustments of the Rate Structure of Common Carriers Subject to the Interstate Commerce Act, and the Fixing of Rates and Charges

March 12, 1925.

To the Public:

As directed by a joint resolution of the Congress, S. J. Res. 107, the so-called Hoch-Smith resolution, approved January 30, 1925, the Interstate Commerce Commission has to-day instituted a general investigation upon its own motion, by order, docketed and entitled as above. Therein are brought in question all the rates, fares, and charges, and all classifications, regulations, and practices relating thereto, of common carriers subject to the interstate commerce act for the transportation or transmission in interstate or foreign commerce of the various classes and kinds of commodities and of the various classes of traffic, including freight, passenger, mail, and express; and also the relationship between the interstate and intrastate rates, fares, and charges. A copy of this order is attached and the joint resolution is set out therein.

Briefly summarized, the purpose of this investigation is to comply with the joint resolution in order to determine the extent and manner in which the rate structure of common carriers subject to the interstate commerce act is in any respect unlawful, and to make in accordance with law such changes, adjustments, and redistribution in that rate structure as may be necessary to correct any defects found to exist.

In discharge of this duty the commission will not enter at once upon extensive hearings. It intends to conduct the investigation in a manner conducive to full and orderly development of material facts and with as little delay and expense to shippers, carriers, and the Government, and as little disturbing effect upon production, distribution, and the free flow of commerce, as may be found practicable. Necessary or appropriate decisions and orders may be made

in the progress of the investigation. The commission is required to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by the existing depression declared in said joint resolution, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service.

The joint resolution authorizes and directs the commission to make a thorough investigation of the rate structure of "common carriers subject to the interstate commerce act." Accordingly all pipe-line companies; telegraph, telephone, and cable companies operating by wire or wireless; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such forms of transportation or transmission, as well as those engaged in the transportation of persons or property by rail or by water subject to the act, have been made respondents in this proceeding. But it is not the intention of the commission to proceed now, without further notice, to consider the rate structure of carriers other than those engaged in the transportation of persons or property, including mail and express matter, by rail or by water subject to the act, as a part of the present proceeding of investigation.

In the conduct of this investigation the commission will avail itself, as far as it can, of the assistance and cooperation of State authorities possessing rate-making powers, and invokes the cordial cooperation and assistance of all shippers and carriers.

Changes, if any, in the rate structure of the country, under the resolution, will be made after giving due consideration, among other factors, to:

(1) The conditions which prevail in the several industries of the country in so far as it is legally possible to do so, to the end that commodities may freely move, consideration of which to such extent is declared by Congress to be the true policy in rate making to be pursued by the commission.

(2) The general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years.

(3) A natural and proper development of the country as a whole.

(4) The maintenance of an adequate system of transpor [fol. 841c] tation.

(5) Other requirements of law, whether statutory or found in the Constitution, which control the commission in respect of the initiation, modification, establishment, or adjustment of such rates, fares, charges, and all classifications, regulations, and practices relating thereto.

Attention is directed to the proviso in the last paragraph of the resolution:

Provided, That no investigation or proceeding resulting from the adoption of this resolution shall be permitted to delay the decision of cases now pending before the commission involving rates on products of agriculture, and that such cases shall be decided in accordance with this resolution.

The provisions of the resolution are now a part of the law which the commission administers, and are therefore to be applied in every case which may fall within the terms of the resolution, or be affected thereby, whether adversely or beneficially.

The commission expects these requirements of the law to be considered by all parties in proceedings now pending before it, so that any material and relevant facts necessary may be made of record in cases yet to be heard. As to cases already heard, whatever their status short of final decision by the commission, any party deeming the record insufficient in this regard should promptly call the attention of the commission and adverse parties to the deficiency, and the general nature of the facts tendered to supply the omission. This should be done in the manner in which other procedural motions are made and served in pending cases.

If in the light of the resolution parties to cases heretofore decided consider that such cases should be reopened for the purpose of presenting matters comprehended by the resolution, application for such reopening should be made in the manner prescribed by Rule XV of the commission's Rules of Practice, and should state briefly the nature and

purpose of the evidence to be introduced as required by that rule.

In order that the commission may as soon as possible carry out the mandates of the joint resolution as above summarized, and in aid of such purposes, the public generally, including both shippers and carriers, whether as individuals or in organizations, and the public authorities, State and Federal, (1) may file with the commission any desired brief or statement as to the intent of the joint resolution, the construction thereof, and the procedure to be pursued in giving effect thereto; and (2) may bring to the attention of the commission any appropriate statement of the facts, verified by affidavit, deemed to bring any classes of traffic, or any class or kind of commodities, or any general or special schedule of rates, fares, and charges, or other matters embraced in the investigation, within the provisions of the resolution. In the event it is claimed that any of the various classes and kinds of commodities and of the various classes of traffic is subjected to undue burden, any traffic or commodities receiving undue advantage or on which compensatory increases could be placed if found necessary should be indicated as clearly as possible. To facilitate the study and examination of the informal representations so to be made, it is desired that such memoranda shall be prepared and printed in the same form as briefs before the commission although legible typewritten or mimeographed memoranda will be received, and that at least 25 copies shall be furnished to the commission for its use, as soon as possible, and not later than May 15, 1925. A file of such memoranda will be open to public inspection in the office of the secretary of the commission. Answers to any such memoranda may be made by any interested person in like manner and be lodged with the commission not later than June 15, 1925. Such memoranda can not, under the law, take the place of evidence upon the hearing, or be given weight in the final consideration and disposition by the commission of the matters involved. They are desired for the aid and guidance of the commission in shaping its procedure.

Meantime, the commission will constitute a committee of its own membership, which, with the assistance of competent experts, and of representatives of the State commis-

sions, will study known or discoverable situations. Upon consideration of the results of such study and of the representations made by memoranda as contemplated in the last preceding paragraph of this notice, and of such applications as may be made for rehearings or further hearings in pending or decided cases, the commission will — and announce the order of its further procedure in the pending investigation.

All correspondence in this proceeding should be addressed to the secretary of the Interstate Commerce Commission, Washington, D. C., and should refer to Docket No. 17000.

By the Commission.

George B. McGinty, Secretary.

[fols. 842 & 843] Petitioners thereupon offered and there was admitted in evidence a Report and Order of the Interstate Commerce Commission dated July 14, 1926 in that certain proceeding before it entitled "Ex parte 87, Revenues in Western District—No. 17,000, Rate Structure Investigation," which said Report and Order are in the following form:

"Said Report and Order of the Interstate Commerce Commission in 'Ex Parte 87, Revenues in Western District —No. 17000—Rate Structure Investigation' is omitted in the printing hereof and is set out in full in the official reports of the Interstate Commerce Commission in Volume 113 thereof at page 3."

[fols. 844 & 845] Petitioners thereupon offered, and there was admitted in evidence, the Report and Order of the Interstate Commerce Commission dated May 16, 1922, in that certain proceeding entitled "Reduced Rates, 1922. In the Matter of Rates, Fares and Charges of Carriers by railroad subject to the Interstate Commerce Act. Docket No. 13293," which said Report and Order are in the following form:

"Said Report and Order of the Interstate Commerce Commission, 'No. 13293, Reduced Rates, 1922, In the Matter of the Rates, Fares and Charges of Carriers by Railroads, subject to the Interstate Commerce Act,' is omitted in the

printing hereof and is set out in full in the official reports of said Interstate Commerce Commission in Volume 68 thereof at page 676."

[fols. 846 & 847] Petitioners thereupon offered, and there was admitted in evidence, the Report and Order of the Interstate Commerce Commission in that proceeding entitled "Lake-Cargo Coal from Kentucky, Tennessee, Virginia and West Virginia to Lake Erie Ports, Investigation and Suspension, Docket No. 2967," which said Report and Order are in the following form:

"Said Report and Order of the Interstate Commerce Commission 'Investigation and Suspension Docket No. 2967, Lake Cargo Coal from Kentucky, Tennessee, Virginia and West Virginia to Lake Erie Ports' is omitted in the printing hereof and is set out in full in the official reports of the Interstate Commerce Commission in Volume 139 thereof at page 367."

[fol. 848] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGES CERTIFICATE TO STATEMENT OF EVIDENCE—Filed June 13, 1928

The foregoing Statement of Evidence is a true, complete and properly prepared statement of the substance of all of the testimony and evidence introduced and admitted upon the trial of the above entitled cause in the Southern Division of the United States District Court for the Northern Division of California, Third Division, all particulars not essential to the decision of the questions presented being omitted, and the same is hereby settled, allowed and approved as the Statement of Evidence in the Appeal of the above entitled Court.

Dated This 11th day of June, A. D. 1928.

A. F. St. Sure, United States District Judge. Frank H. Rudken, United States Circuit Judge. Frank A. Kerrigan, United States District Judge.

[File endorsement omitted.]

[fol. 849] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ENLARGING TIME TO PREPARE TRANSCRIPT OF RECORD AND DOCKET APPEAL—Filed June 2, 1928

Good cause appearing therefor,

It is hereby ordered that the time within which to prepare the transcript of record on appeal and docket the appeal of the petitioners in the above entitled suit in the Supreme Court of the United States be, and the same is hereby, enlarged to and including the 1st day of August, A. D. 1928.

Dated June 2d, 1928.

A. F. St. Sure, District Judge. Frank H. Rudkin, Circuit Judge. Frank H. Kerrigan, District Judge.

[File endorsement omitted.]

[fol. 850] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRECIPE FOR TRANSCRIPT OF RECORD—Filed June 16, 1928

To the Clerk of the above entitled Court:

You will please prepare transcript of record in this cause to be filed in the office of the Clerk of the Supreme Court of the United States for use on appeal to the Supreme Court of the United States, and you will please incorporate in such transcript the following portions of the record in this cause:

1. Petition and Bill for Injunction;
2. Motion of California Growers' and Shippers' Protective League for leave to file petition in intervention;
3. Order granting motion of California Growers' and Shippers' Protective League for leave to file petition in intervention and order to show cause;
4. Petition of California Growers' and Shippers' Protective League for permission to intervene;

[fol. 851] 5. Order Permitting Intervention of California Growers' and Shippers' Protective League;

6. Answer of United States of America;

7. Answer of California Growers' and Shippers' Protective League;

8. The Answer, if any, filed by Interstate Commerce Commission.

9. Order denying Application for temporary injunction made and entered January 18, 1928.

10. Memorandum Opinion of Court on Order denying Application for temporary injunction;

11. Order to show cause dated February 16, 1928;

12. Affidavit of H. Giddings, dated April 30, 1928, filed May 1, 1928.

13. Memorandum Order and Opinion dismissing cause and denying Stay pending Appeal, filed May 3, 1928;

14. Final Decree made and entered May 9, 1928;

15. Petition for Appeal from final decree;

16. Assignment of Errors on appeal from final decree;

17. Order allowing Appeal from final decree;

18. Bond on appeal from final decree;

19. Order enlarging time to prepare statement on appeal till June 10, 1928;

20. Citation issued on appeal from final decree;

21. Notice of Appeal directed to Attorney General of State of California, filed May 16, 1928.

22. Acknowledgment of service of assignment of errors, Order allowing appeal and Citation, filed June 11, 1928;

23. Acknowledgment of Service of Notice of Appeal filed June 11, 1928;

24. Statement of Evidence on final hearing together with order approving the same.

25. Order enlarging time to prepare transcript of record and docket appeal.

26. Præcipe for Transcript of Record.

27. Clerk's Certificate of Transcript of Record.

[fol. 852] Said Transcript to be prepared as required by law and the rules of the Supreme Court of the United States.

The original Citation with the acceptance of service thereof by the defendants and intervenor should accompany the transcript.

Herman Phleger, M. E. Harrison, Platt Kent, James E. Lyons, James S. Moore, Jr., Elmer Westlake, Attorneys for Petitioners.

Dated June 15th, 1928.

Receipt of a copy of the foregoing Præcipe for Transcript of Record is hereby acknowledged this 15th day of June, 1928.

McCutcheon, Olney, Mannon & Greene, Allan P. Matthew, Attorneys for Intervenor, California Growers' and Shippers' Protective League. Geo. J. Hatfield, United States Attorney for the Northern District of California, Attorney for Defendant, United States of America, and Interstate Commerce Commission.

Stipulation

It is hereby stipulated that the portions of the record listed in the above præcipe shall be incorporated into and constitute the record on appeal from the final decree heretofore entered herein.

McCutcheon, Olney, Mannon & Greene, Allan P. Matthew, Attorneys for Intervenor, by A. C. Aurich, Deputy Clerk.

Dated June 15, 1928.

[File endorsement omitted.]

[fol. 853] In United States District Court

[Title omitted]

Supplemental Præcipe for Transcript of Record—Filed June 19, 1928

To the Clerk of the above-entitled Court:

In preparing the transcript of record in this cause to be filed in the office of the Clerk of the Supreme Court of the

United States for use on appeal pursuant to the præcipe for transcript of record, filed June 16, 1928, you will please incorporate in such transcript the following additional portions of the record in this cause:

1. Order of the above named Court, made February, 1928, denying the application of the petitioners for a stay of the order of the Interstate Commerce Commission pending appeal from the order of said Court denying a temporary injunction herein;

2. Notice of Appeal from final decree, filed June 8th, 1928.

3. Supplemental præcipe for Transcript of Record.

Dated: June 18th, 1928.

Herman Phleger, M. E. Harrison, Platt Kent, James [fol. 854] E. Lyons, James S. Moore, Jr., Elmer Westlake, Attorneys for Petitioners. Allan P. Matthew, McCutchen, Olney, Mannon & Greene, Attorneys for Intervenor, California Growers' & Shippers' Protective League.

Due service of a copy of the within Supplemental præcipe is hereby admitted this 19 day of June, 1928.

Geo. J. Hatfield, United States Attorney for the Northern District of California, Attorney for Defendants.

[File endorsement omitted.]

[fol. 854a] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DIRECTING FILING OF COPY OF ANSWER OF DEFENDANT INTERSTATE COMMERCE COMMISSION NUNC PRO TUNC AND DIRECTING THE CLERK TO INCLUDE SAME IN RECORD ON APPEAL—Filed June 27, 1928

It appearing to the Court that the defendant herein Interstate Commerce Commission on the 20th day of December, 1927, served upon the other parties to the action and offered for filing in open court its verified answer to the

bill of complaint herein and that through inadvertence said answer was not filed and that the same is not now on file herein;

Now, therefore, it appearing that the making of this order is agreeable to all of the parties herein,

It is ordered that a copy of said answer of said Interstate Commerce Commission may be filed herein nunc pro tunc as of December 20, 1927, and the Clerk of this Court is hereby authorized and directed to accept such copy for filing and to file the same, nunc pro tunc as of December 20, 1927, and to include the same in the record on appeal to the Supreme Court of the United States herein.

Dated June 27, 1928.

Frank H. Rudkin, United States Circuit Judge.

[File endorsement omitted.]

[fol. 855] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 856-859] "Citation, in the usual form, showing service on the attorneys for Interstate Commerce Commission, Intervenor California Growers' & Shippers' Protective League, and the Solicitor General of the United States, filed May 28, 1928" [omitted in printing.]

[fol. 860] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY AND STIPULATION AS TO PRINTING RECORD—Filed July 26, 1928.

Come now the appellants in the above entitled cause, and state the points upon which they intend to rely upon this appeal from the decree made on May 9, 1928, dismissing their petition and bill for injunction, which are particularly set forth in their assignments of error and are as follows:

The United States District Court erred in making said decree and refusing to suspend, set aside and annul the

order of the Interstate Commerce Commission (hereinafter called "the order of the Commission"), for the following reasons:

I. The order of the Commission violates the provisions of the Fifth Amendment to the Constitution of the United States (Assignments of Error Nos. II and V).

(a) The rates fixed by said order do not afford to the [fol. 861] carriers substantial compensation over their proper costs in the carriage of goods under said rates. The order will therefore deprive the carriers of their private property without just compensation and is invalid and void (Assignment of Error No. VI).

(b) The rates fixed by said order do not permit the carriers to receive the costs incurred by them in the carriage of goods under said rates. The order, therefore, will deprive the carriers of their private property without just compensation and is invalid and void (Assignment of Error No. IV).

II. The order of the Commission violates the provisions of the Fifth Amendment to the Constitution of the United States, because the carriers are thereby deprived of their property without due process of law (Assignment of Error No. III).

III. The order of the Commission is not supported by, and is contrary to, the findings made by the Commission in the proceedings and report upon which it is based, and the order is therefore arbitrary and beyond the power of the Commission.

(a) The Commission failed to make any determination or finding whatever that the rates which were lowered by the order of the Commission were unreasonable or unduly prejudicial. The Commission did find that the rates low-[fol. 862] ered by the order of the Commission were not unreasonable and not unduly prejudicial. The Commission had no power to lower a reasonable and not unduly prejudicial rate (Assignments of Error Nos. IX, X and XI).

(b) The Commission failed to make any determination or finding whatever that the rates fixed by the order of the Commission, or either of them, are reasonable. The Commission has no power to fix any but a reasonable rate (Assignments of Error Nos. VII and VIII).

(c) The Commission found that deciduous fruits were moving freely in interstate commerce in unprecedented volume and that freedom of movement thereof had increased and would continue so to do. Nevertheless, it erroneously concluded that the rates fixed by said order were necessary to promote freedom of movement of deciduous fruits in interstate commerce, upon the ground that shippers of deciduous fruits were not making a profit (Assignment of Error No. XXV).

(d) The Commission found that the carriers of the country, as a whole, were not making the return required by Section 15-a of the Interstate Commerce Act, and that rates lowered by said order were reasonable. The Commission has no power to reduce a reasonable rate when to do so is to deprive the carriers of the return to which they are entitled pursuant to Section 15-a of the Interstate Commerce Act (Assignment of Error No. XLII).

[fol. 863] (e) The Commission found that the rates fixed by the order of the Commission are slightly above operating expenses and afford to the carriers only a slight margin of profit. The rates fixed by said order of the Commission are therefore unreasonable and the order of the Commission is contrary to and unsupported by its findings (Assignments of Error Nos. XXXIII and XXXIV).

(f) The Commission found that the rates fixed by the order of the Commission are slightly above operating expenses and afford to the carrier only a slight margin of profit. The rates fixed by said order of the Commission are, therefore, not compatible with the maintenance of adequate transportation facilities, and the order of the Commission is contrary to and unsupported by its findings (Assignment of Error No. XXXVII).

(g) The Commission found that there is no depression in the business of producing certain fruits. There is not,

therefore, an existing depression in the whole of the deciduous fruit industry, and the order of the Commission is contrary to and unsupported by its findings (Assignment osf Error No. XXXV).

IV. The order of the Commission is based upon a mistake of law and is void, because the order is based solely upon the Joint Resolution of Congress, approved January 30, 1925, 43 Statutes at Large, page 801 (hereinafter called "the Hoch-Smith Resolution"), which was misconstrued [fol. 864] and misapplied by the Commission in said proceeding (Assignment of Error No. XIV).

(a) The Commission misapplied the Hoch-Smith Resolution in this proceeding, which was instituted by a single shipper or class of shippers, and involved a single rate or class of rates, and was not a general investigation of the rate structure of the country instituted by the Commission pursuant to the Hoch-Smith Resolution (Assignment of Error No. XVIII).

(1) The Commission misconstrued the Hoch-Smith Resolution as authorizing it to reduce, and it did reduce, a single rate or class of rates, without a contemporaneous re-arrangement of the rate structure of the country (Assignment of Error No. XVII).

(b) The Commission erroneously construed the Hoch-Smith Resolution as authorizing and directing it to reduce, and it did reduce, reasonable rates to relieve an economic depression in an industry and to fix the same at a level which will enable shippers to do business at a profit, without regard to the carriers' costs and without permitting the carriers a reasonable, or any profit (Assignment of Error Nos. XIII, XV and XLVI).

(c) The Commission erroneously construed the Hoch-Smith Resolution as authorizing and directing it to reduce, and it did reduce, rates to promote freedom of movement of deciduous fruit in interstate commerce, because the ship-[fol. 865] pers involved are not making a profit, even though deciduous fruit was moving in interstate commerce in large and increasing quantities (Assignment of Error No. XXV).

(d) The Commission erroneously construed the Hoch-Smith Resolution as authorizing it to reduce, and it did reduce, rates pursuant to the Hoch-Smith Resolution, without considering the general and comparative levels in market value of the various classes and kinds of commodities over a reasonable period of years, and the relative conditions prevailing in the several industries of the country (Assignment of Error No. XII).

(e) The Commission erroneously construed the Hoch-Smith Resolution as authorizing the Commission to fix, and it did fix, rates slightly in excess of the carriers' cost (Assignments of Error Nos. XXXII, XXXIII and XXXIV).

(f) The Commission erroneously construed the Hoch-Smith Resolution as authorizing it to reduce, and it did reduce, reasonable rates while the carriers were not earning a return in accordance with the provisions of Section 15-a of the Interstate Commerce Act, without providing increases in other rates to compensate the carriers for the losses in revenue resulting from said order (Assignments of Error Nos. XLI and XLII).

(g) The Commission erroneously construed the Hoch-Smith Resolution as authorizing it to fix, and it did fix, a rate without reference to the propriety thereof under the [fol. 866] provisions of Section 3 of the Interstate Commerce Act.

(1) The Commission construed the Hoch-Smith Resolution as authorizing it to fix, and it did fix, rates for products of agriculture in a depressed condition relatively lower than the rates fixed for similar products of other industries (Assignment of Error No. XVI).

(2) The Commission construed the Hoch-Smith Resolution as authorizing it to fix, and it did fix, rates for products of agriculture of a particular locality relatively lower than, and without regard to, the rates on similar agricultural products of other localities (Assignments of Error Nos. XLIII and XLIV).

(h) The Commission erroneously construed the Hoch-Smith Resolution as authorizing it to reduce, and it did reduce, reasonable rates without readjusting rates to pre-

serve for the carriers the revenues which they had prior to such reduction (Assignment of Error No. XLV).

V. The order of the Commission is based upon a mistake of law and is arbitrary and void, because the Commission found that rates in excess of those fixed therein were not unreasonable considering the cost and value of the service and reasonable return to be received by the carriers for the service involved, but, nevertheleess, fixed the rates established by the order of the Commission, because of the de-
[fol. 867] pressed financial condition of the business of certain shippers, the inability of the shippers to realize a profit on their shipments and the relatively prosperous financial condition of the carriers (Assignment of Error No. XLIX).

VI. The order of the Commission is based upon a mistake of law and is arbitrary and void, because the Commission construed the law as authorizing it to fix, and it did fix, rates which would not return to the carriers any profit whatever.

(a) The Commission fixed rates which it found would return to the carriers only a slight excess over operating expenses (Assignments of Error Nos. XXXII and XXIII).

(b) The Commission fixed rates which it found would return to the carriers only some or a slight margin of profit (Assignment of Error No. XXXIV).

VII. The order of the Commission is arbitrary and based upon a mistake of law, because the Commission imposed upon the carriers the burden of proving that the rates reduced by the order of the Commission were reasonable (Assignment of Error No. XLVII).

VIII. The order of the Commission is arbitrary and based upon a mistake of law, because the Commission imposed upon the carriers the burden to establish that the rates fixed by said order were not reasonable and not the
[fol. 868] lowest possible lawful rates compatible with the maintenance of adequate transportation facilities (Assignment of Error No. XLVIII).

IX. The order of the Commission was arbitrary and beyond its power, in that there was no evidence to support the same.

(a) There was no evidence introduced before the Commission that the rates reduced by the order of the Commission were unreasonable. The undisputed evidence established that such rates were reasonable and the finding of the Commission that the rates lowered by said order of the Commission were unreasonable is without evidence to support it (Assignment of Error No. XX).

(b) There was no evidence introduced before the Commission that any rates in excess of the rates fixed by its order were unreasonable. The finding of the Commission that any rates higher than those fixed by said order are unreasonable, is without evidence to support it (Assignment of Error No. XXI).

(c) There was no evidence that the rates fixed by the order of the Commission were reasonable. The evidence introduced showed that the rates fixed by the order were confiscatory (Assignment of Error No. XXII).

(d) There was no evidence to support the conclusion of the Commission that there was a depression in the whole of the deciduous fruit industry. The undisputed evidence [fol. 869] and findings of the Commission was that there was no depression in the business of producing certain deciduous fruits (Assignment of Error No. XXIII).

(e) There was no evidence to support the conclusion of the Commission that a reduction in the rates involved was necessary to promote the freedom of movement of deciduous fruits in interstate commerce. The undisputed evidence and findings of the Commission are to the contrary (Assignments of Error Nos. XXIV and XXVI).

(f) There was no evidence to support the finding of the Commission that the rates fixed by said order were the lowest possible lawful rates compatible with interstate commerce. The undisputed evidence showed the contrary (Assignments of Error Nos. XXVI, XXVII, XXVIII and XXIX).

(g) There was no evidence to support the finding of the Commission that the rates fixed by the order of the Commission were required by due regard to the general and comparative levels of the various classes and kinds of com-

modities over a reasonable period of years (Assignment of Error No. XXX).

(h) There was no evidence to support the finding of the Commission that the increased minimum load prescribed by the order of the Commission would make some increase in the average revenue per car (Assignment of Error No. XXXI).

[fols. 870-872] X. The order of the Commission is void, because it is based solely upon the Hoch-Smith Resolution and the Hoch-Smith Resolution violates the Fifth Amendment to the Constitution of the United States, and is unconstitutional and void (Assignments of Error Nos. XXXVIII, XXXIX and XL).

[fol. 873] Dated July 18, 1928.

Herman Phleger, M. E. Harrison, Platt Kent, James E. Lyons, James S. Moore, Jr., Elmer Westlake, Attorneys for Appellants.

[fols. 874 & 875] Receipt of a copy of the foregoing Statement is hereby acknowledged this 18th day of July, A. D. 1928.

Allan P. Matthew, McCutchen, Olney, Mannon & Greene, Attorneys for Appellee, California Growers' & Shippers' Protective League.

Receipt of a copy of the foregoing statement is hereby acknowledged this 23rd day of July, A. D. 1928.

Blackburn Esterline, Assistant to the Solicitor General. J. Stanley Payne, Attorney for Appellee Interstate Commerce Commission.

[fol. 876] Stipulation for Printing of Record

It is hereby stipulated by and between the parties to the above entitled action that the whole of the record on appeal in the said action should be printed, except the following portions thereof:

1. The bond on appeal from final decree in said action, in lieu of which may be inserted the following:

"Bond on appeal for $500 approved and filed May 10, 1928."

2. Citation issued on appeal from said final decree, in lieu of which may be inserted the following:

"Citation, in the usual form, showing service on the attorneys for Interstate Commerce Commission, Intervenor California Growers' & Shippers' Protective League, and the Solicitor General of the United States, filed May 28, 1928."

3. Acknowledgment of Service of Notice of Appeal filed June 11, 1928, in lieu of which may be inserted the following:

[fol. 877] "Acknowledgment of service of Notice of Appeal showing service of same upon Solicitor General of the United States and the Attorney for Interstate Commerce Commission, filed June 11, 1928."

4. Acknowledgment of service of Assignment of Errors, Order allowing appeal and citation, filed June 11, 1928, in lieu of which may be inserted the following:

"Acknowledgment of service of Assignment of Errors, Order allowing appeal and citation showing service of said documents upon the Solicitor General for the United States and the attorney for the Interstate Commerce Commission, filed June 11, 1928."

5. Copy of answer of California Growers' & Shippers' Protective League, appearing at pages 57 to 78 of the record on appeal, in lieu of which may be inserted the following:

"Attached to the foregoing petition to intervene is a copy of the answer of California Growers' & Shippers' Protective League, which appears herein at pages — to —.

6. The following portions of the Statement of Evidence on final hearing:

(a) Report and Order of Interstate Commerce Commission in Docket No. 19130, entitled "California Growers' and Shippers' Protective League vs. Southern Pacific, et al.," which said report and order follow page 385 (d) of the Statement of Evidence, in lieu of which the following may be inserted:

"Said Order and Report are set out in full in the Petition and Bill for Injunction of the Petitioners and Appellants, the said order appearing at page No. —, herein, and said report appearing at pages Nos. — to — herein."

(b) Report of the Interstate Commerce Commission on further consideration in said Docket No. 19130 in said pro-
[fol. 878] ceeding entitled "California Growers' and Shippers' Protective League vs. Southern Pacific, et al.," appearing at pages 397 (a), 397 (b) and 397 (c) of said Statement of Evidence, in lieu of which the following may be inserted:

"Said Report of the Interstate Commerce Commission on further consideration is set out in full in the Petition and Bill for Injunction of the petitioners and appellants appearing at pages — to — herein."

(c) The report and order of the Interstate Commerce Commission in that certain proceeding entitled "Ex Parte 87, Revenues in Western District—No. 1700—Rate Structure Investigation," appearing after page 403 of said Statement of Evidence, in lieu of which may be inserted the following:

"Said Report and Order of the Interstate Commerce Commission in 'Ex Parte 87, Revenues in Western District —No. 17000—Rate Structure Investigation' is omitted in the printing hereof and is set out in full in the official reports of the Interstate Commerce Commission in Volume 113 thereof at page 3."

(d) That certain report and order of the Interstate Commerce Commission, entitled "No. 13293, Reduced Rates, 1922, in the Matter of Rates, Fares and Charges of Carriers by Railroad, subject to the Interstate Commerce Act," which appears after page 404 of said Statement of Evidence, in lieu of which the following may be inserted:

"Said report and Order of the Interstate Commerce Commission, 'No. 13293, Reduced Rates, 1922, In the Matter of the Rates, Fares and Charges of Carriers by Railroads, subject to the Interstate Commerce Act,' is omitted in the printing hereof and is set out in full in the official

reports of said Interstate Commerce Comission in Volume 68 thereof at page 676."

[fol. 879] (e) The Report and Order of the Interstate Commerce Commission "Investigation and Suspension Docket No. 2967, Lake Cargo Coal from Kentucky, Tennessee, Virginia and West Virginia to Lake Erie Ports"—which said report and order appears after page 405 of said Statement of Evidence, in lieu of which the following may be inserted:

"Said Report and Order of the Interstate Commerce Commission 'Investigation and Suspension Docket No. 2967, Lake Cargo Coal from Kentucky, Tennessee, Virginia and West Virginia to Lake Erie Ports' is omitted in the printing hereof and is set out in full in the official reports of the Interstate Commerce Commission in Volume 139 thereof at page 367."

And it is hereby further stipulated by and between the parties to the above entitled action that said Orders and Reports of the said Interstate Commerce Commission omitted in printing of said record, may be referred to by the various parties to said Appeal and their counsel, by reference to said official reports of the Interstate Commerce Commission with the same force and effect as if said reports and orders were printed in full.

And it is hereby further stipulated that in the printing of said record on appeal, the Answer of Interstate Commerce Commission may be inserted immediately following the Answer of the United States.

Dated July 9, A. D. 1928.

Herman Phleger, M. E. Harrison, Platt Kent, James [fols. 880 & 881] E. Lyons, James S. Moore, Jr., Elmer Westlake, Attorneys for Appellants. Allan P. Matthew, McCutchen, Olney, Mannon & Greene, Attorneys for Appellee California Growers' and Shippers' Protective League. J. Stanley Payne, Attorney for Interstate Commerce Commission.

With the exceptions of Items one, two, three and four of the foregoing stipulation (which in the view of Government counsel relate to matters which should be left entirely to the discretion and supervision of the Clerk in printing the record) and the last paragraph of four lines thereof which immediately precedes the date (unless it meets with the approval of the Clerk), the counsel for the United States concurs in the foregoing stipulation.

July 25, 1928.

Blackburn Esterline, Assistant to the Solicitor General, for the United States.

[fol. 882] [File endorsement omitted.]

Endorsed on cover: File No. 33,582. N. California D. C. U. S. Term No. 273. The Ann Arbor Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, et al., appellants, vs. The United States of America, The Interstate Commerce Commission and The California Growers' & Shippers' Protective League. Filed July 14th, 1928. File No. 33,582.

FILE COPY

FILE
AUG 3

In the Supreme Court

OF THE

United States

October Term, 1928

THE ANN ARBOR RAILROAD COMPANY, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, and CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE,

Appellees.

Appeal from District Court, Northern District of California, Southern Division.

Statement of Basis on which Court Has Jurisdiction to Review Decree on Appeal.

HERMAN PHLEGER,
MAURICE E. HARRISON,
PLATT KENT,
JAMES E. LYONS,
JAMES S. MOORE, JR.,
ELMER WESTLAKE,
M. B. PIERCE,
F. D. MCKENNEY,
CLYDE BROWN,
P. F. GAULT,
J. N. DAVIS,
A. B. ENOCH,
KENNETH F. BURGESS,
ELMER A. SMITH,
Crocker Building, San Francisco,
Attorneys for Appellants.

F. M. ANGELLOTTI,
E. W. CAMP,
J. S. HALSTED,
GUY V. SHOUP,
Of Counsel.

In the Supreme Court
OF THE
United States

October Term 1928

THE ANN ARBOR RAILROAD COMPANY, et al.,
Appellants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, and CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE,
Appellees.

Appeal from District Court, Northern District of California, Southern Division.

No. 273

Statement of Basis on which Court Has Jurisdiction to Review Decree on Appeal.

The appellants in the above entitled suit present this, their statement required by rule numbered 12 of the Revised Rules of the Supreme Court of the United States.

By this suit, the appellants sought to enjoin, suspend and set aside an order of the Interstate Commerce Commission which lowered certain rates charged by the appellants for transportation of deciduous fruits. The suit was heard by a Court of three judges

convened pursuant to the Act of Congress of October 22, 1913, 38 Statutes at Large, 220 (Code of Laws of the United States, Title 28, Section 47). On May 9, 1928, a final decree was made by the Court against the appellants, dismissing their petition and sustaining the order of the Interstate Commerce Commission. From that decree the appellants have appealed to the Supreme Court of the United States.

1. The jurisdiction of this Court to review said decree on appeal is sustained by the following statutory provisions:

The Act of October 22, 1913, entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen, and for other purposes" (38 Statutes at Large, 219) confers upon the District Courts the jurisdiction theretofore vested in the Commerce Court, including jurisdiction over all suits brought to enjoin, suspend, annul or set aside any order of the Interstate Commerce Commission. The same Act provides, with reference to an appeal from a final decree of the District Court in such an action, as follows:

> "A final judgment or decree of the District Court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like

manner as appeals are taken under existing law in equity cases."

38 Statutes at Large, 220; Code of Laws of the United States, Title 28, Sec. 47.

By the Act of February 13, 1925, entitled "An Act to amend the Judicial Code and to further define the jurisdiction of the Circuit Courts of Appeals and of the Supreme Court, and for other purposes", Section 238 of the Judicial Code was amended to provide:

"A direct review by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:

* * * * * * *

"(4) So much of 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913, and for other purposes', approved October 22, 1913, as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend or set aside orders of the Interstate Commerce Commission other than for the payment of money."

38 Statutes at Large, 938; Judicial Code, Sec. 238; Code of Laws of the United States, Title 28, Sec. 345.

2. The decree sought to be reviewed upon this appeal was made and entered on the 9th day of May, 1928. Said decree appears at page 123 of the record on file in this Court and the date of making and

entry thereof is specified at page 125 thereof. The petition for appeal herein was presented and the order of said District Court was made on the 10th day of May, 1928. Said petition for appeal appears at page 126 of said record, and said order allowing appeal at page 150 thereof.

3. This suit was instituted by the appellants for the purpose of enjoining, suspending and setting aside a certain order of the Interstate Commerce Commission. The petition and bill for injunction of the appellants filed in the United States District Court for this purpose appears at page 1 of the record herein. The order of the Interstate Commerce Commission involved herein was made by the Interstate Commerce Commission on July 20, 1927, in a certain proceeding instituted by California Growers' and Shippers' Protective League, one of the appellees. The order of the Interstate Commerce Commission required the appellants to establish, within the time specified therein, rates which would not exceed $1.60 per one hundred pounds for the transportation of deciduous fruits in carloads from points in California to certain Eastern points, and rates which would not exceed $1.50 per one hundred pounds for the transportation of the same commodities from points in California to certain other points. The rates required to be established by the order of the Interstate Commerce Commission are substantially lower than the rates which were in effect at the time that the order was made. The petition and

bill for injunction of the appellants alleged and asserted that the order of the Interstate Commerce Commission was void, upon certain grounds more particularly stated in the assignments of error (page 129 of the record). After hearing by the District Court of the United States, a decree was made and entered by it on May 9, 1928, dismissing the petition and bill of the appellants and sustaining the order of the Interstate Commerce Commission (page 123 of the record). This decree of the District Court of the United States constituted a final judgment and decree of the District Court within the meaning of the Act of Congress of October 22, 1913, 38 Statutes at Large, 220, and pursuant to the provisions thereof, and of the Act of Congress of February 13, 1925, 38 Statutes at Large, 938, a direct review by the Supreme Court of the United States of this final judgment and decree may be had.

4. Cases which sustain the jurisdiction of this Court to review said decree are as follows:

Dayton-Goose Creek Ry. v. United States, 263 U. S. 456;

Stafford v. Wallace, 258 U. S. 495, 512;

Louisville & Nashville Railroad v. United States, 238 U. S. 1;

United States v. The Baltimore and Ohio R. R. Co., 225 U. S. 306;

Virginian Railway Company v. United States, 272 U. S. 658;
United States v. New York Central Railroad, 263 U. S. 603.

Respectfully submitted,

HERMAN PHLEGER,
MAURICE E. HARRISON,
PLATT KENT,
JAMES E. LYONS,
JAMES S. MOORE, JR.,
ELMER WESTLAKE,
M. B. PIERCE,
F. D. MCKENNEY,
CLYDE BROWN,
P. F. GAULT,
J. N. DAVIS,
A. B. ENOCH,
KENNETH F. BURGESS,
ELMER A. SMITH,
Attorneys for Appellants.

F. M. ANGELLOTTI,
E. W. CAMP,
J. S. HALSTED,
GUY V. SHOUP,
Of Counsel.

Receipt of a copy of the foregoing Statement is hereby acknowledged on this_____day of July, 1928.

_____

_____

Attorneys for Appellee California Growers' and Shippers' Protective League.

Receipt of a copy of the foregoing Statement is hereby acknowledged on this_____day of_____, 1928.

_____

Attorney for Appellee Interstate Commerce Commission.

Receipt of a copy of the foregoing Statement is hereby acknowledged on this_____day of_____, 1928.

_____

Attorney General of the United States

FILE COPY

Office Supreme Court, U. S.
FILED
JAN 31 1929
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court
OF THE
United States

October Term 1928.

No. 7

THE ANN ARBOR RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, et al.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION and THE CALIFORNIA GROWERS' & SHIPPERS' PROTECTIVE LEAGUE,

Appellees.

BRIEF OF APPELLANTS.

HERMAN PHLEGER,
MAURICE E. HARRISON,
PLATT KENT,
JAMES E. LYONS,
JAMES S. MOORE, JR.,
ELMER WESTLAKE,
M. B. PIERCE,
F. D. MCKENNEY,
CLYDE BROWN,
P. F. GAULT,
J. N. DAVIS,
A. B. ENOCH,
KENNETH F. BURGESS,
ELMER B. SMITH,
Attorneys for Appellants,
Crocker Building, San Francisco.

F. M. ANGELLOTTI,
E. W. CAMP,
A. S. HALSTED,
[illegible] V. [illegible],

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NOTE: Opinions were delivered in the court below but have not been reported in the official reports.

In the Supreme Court
OF THE
United States

October Term 1928.

No. 273

THE ANN ARBOR RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, et al.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION and THE CALIFORNIA GROWERS' & SHIPPERS' PROTECTIVE LEAGUE,

Appellees.

BRIEF OF APPELLANTS.

This is an appeal from a decree of the United States District Court for the Northern District of California

(NOTE: All references thus (R. .....) are to pages of the Transcript of Record.)
(All italics are ours.)

[constituted as provided in the Urgent Deficiencies Act of Oct. 22, 1913 (38 Stats. 219)], which dismissed a bill filed in behalf of more than four hundred carriers to annul an order of the Interstate Commerce Commission. The order complained of reduced the rates for the carriage of fresh deciduous fruits from California to Eastern points (129 I. C. C. 25; 132 I. C. C. 582).

The aggregate revenue accruing to the carriers from this traffic exceeded $36,000,000 per annum under the old rates. The reduced rates ordered by the Commission will decrease the revenue of the carriers by an amount in excess of $2,700,000 per annum based upon the 1926 traffic, and will, they claim, cause the traffic to be handled not only without profit, but at an actual loss, beyond the cost of carriage in excess of $240,000 per annum. (R. 14)

The carriers contend that the Commission in reducing the rate, based its action upon a supposed mandate found in certain language of the Hoch-Smith Resolution (43 Stats. 801) directing that "In view of the existing depression in agriculture, the Commission is hereby directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation

service". The carriers further contend that in so acting, the Commission misconstrued and misapplied the said Resolution, that it disregarded several provisions of the Interstate Commerce Act, and that, as a result it fixed a rate that is unlawful and confiscatory. They also contend that the practical construction which the Commission has given to the Hoch-Smith Resolution, in its application to the present case, would render the Resolution unconstitutional.

This case does not turn upon conflicting evidence or disputed questions of fact. The issues are legal rather than factual. The report of the Commission itself furnishes sufficient information to show that the Commission erred in its interpretation and application of the law and that its order is invalid.

THE FACTS.

The California deciduous fruit industry.

California produces and ships the bulk of the fresh deciduous fruits produced and shipped in the United States. The principal fruits, excluding apples which are not involved here, are grapes, peaches, pears, plums, apricots and cherries. By far the most important are grapes. Of these, California, in 1926, shipped 81% of the total carload shipments in the country (R. 19). Most of the remainder are produced in New York, Michigan and Pennsylvania (Exhibit No. 18, R. 218).

Deciduous fruits are produced throughout the entire State of California. Not only is the production of these fruits one of the most important agricultural activities in California, but their transportation from California to the East constitutes one of the most important items of railway traffic. Shipments of deciduous fruit constitute the largest single item of transcontinental tonnage, as well as the greater portion of the transcontinental perishable traffic (R. 18, 19). The aggregate revenue of the carriers derived from this traffic exceeds $36,000,000 annually, and constitutes a substantial portion of the entire freight revenue of those carriers which handle the bulk of the traffic. 6.2% of the entire freight revenue of the Southern Pacific accrues from the transportation of deciduous fruits (R. 425).

In 1926, 1,053,755 tons of fresh deciduous fruits were shipped from California to Eastern points under the rates here in question. This tonnage moved in 75,083 cars and included 58,334 cars of grapes, 9,523 cars of pears, 4,741 cars of plums, and 1,093 cars of peaches (R. 19).

How the traffic is assembled and moved.

The deciduous fruit traffic originates at hundreds of shipping points scattered throughout the State of California. 17½% originates on short line railroads and over 51% on branch lines (R. 19). Empty cars are distributed to the loading points during the night, are loaded during the day, and are then picked up

and taken to concentration points. The highly perishable nature of this traffic requires the utmost expedition in loading and assembling the cars.

The concentration points are Roseville and Colton on the Southern Pacific, Bakersfield on the Santa Fe, Sacramento on the Western Pacific, and San Bernardino on the Union Pacific System. At these points the cars are assembled into through trains for movement over the four railroads named and their connecting carriers to Eastern points (R. 285).

Almost the entire traffic moves to destinations beyond the Mississippi River and North of the Ohio River. The extent of the traffic is indicated by the fact that more than 450 carriers were named as defendants in the proceeding before the Commission, and are adversely affected by the reduction in rates. Almost every railroad in the United States participates to some extent in the carriage of California fruit (R. 20).

Unusual characteristics of the traffic.

The deciduous fruit traffic has many characteristics which distinguish it from ordinary traffic.

1. It is seasonal in character. Movement in substantial quantities begins in June and ends in November, but the peak of the movement is in September and October. In 1925 more than 70% of the annual traffic moved in these two months (Exhibit 52, folio 389).

2. All these fruits move in refrigerator cars, a special type of equipment more expensive than any other in freight service with the exception of tank cars, their cost being about 60% more than box cars. They are proportionately more expensive to maintain and operate (R. 45), and are heavier and hence more expensive to haul than any other type of freight car. Thousands of such cars are owned and maintained by the carriers primarily to accommodate this traffic, and although such cars are used wherever possible in other service, many of them remain idle throughout the entire year except in the fruit season.

3. Deciduous fruit, by reason of its perishable nature, is moved with unusual dispatch. A 154-hour schedule is in effect from California points to Chicago as compared with the ordinary schedule for other traffic of 180 hours or longer (R. 44).

4. There is a high percentage of empty haul. The type of equipment used and the demands of the fruit industry prevent the general use of these cars for other purposes. The loaded movement is almost exclusively eastbound and the necessity for securing prompt return of the cars to California and their relative unsuitability for other traffic, results in a large percentage of empty movement. In 1926 the empty haul of refrigerator cars was 67.58% of the total loaded haul both eastbound and westbound, and over 80% of the cars moving eastward under load were returned empty to California (R. 45).

5. The heavy weight of the refrigerator cars results in a disproportionate weight of equipment to the weight of the paying load. In 1926 the paying load in the case of these deciduous fruits was but 34.9% of the gross weight hauled as compared with 50 to 60% for most commodities (R. 45).

6. Loss and damage claims are higher on deciduous fruits than on other traffic because of the perishable nature of the commodity. In 1926 claims payments made by four originating trunk lines and their short line connections for loss and damage on deciduous fruit shipments amounted to 2.77% of the total revenue from this traffic (R. 46), as compared with claim payments on all traffic by the Santa Fe of 1 per cent of the total freight revenue (R. 307).

7. Special terminal service accorded to deciduous fruit traffic in the larger cities, increases the carrier's costs. For example, the rentals alone for the Duane Street Pier of the Erie Railroad in New York used for this traffic amounts to $3.22 per car handled (R. 47).

8. There are numerous diversions and reconsignments of shipments en route. In 1926 75% of the deciduous fruit cars moved over the Santa Fe were diverted one or more times. In 1926 the average diversions per car were 1.07 (R. 47). No charge is made for diversions west of Chicago. These diversions result in breaking up the trains and reallocation

of cars at almost every division point west of Chicago, thus destroying the advantage of trainload movement.

9. The fruit is shipped in most instances before it is sold. Approximately 80% is sold after arrival in the East, only about 20% being sold before shipment (R. 187). The usual practice is for the shipper to start his cars eastward without a definite destination, diverting and reconsigning the cars en route to various possible markets, eventually sending them to the markets which seem to offer the best opportunity of securing maximum prices.

Increase in the Production and Shipment of Deciduous Fruit.

There has been a remarkably rapid and consistent growth in the volume of deciduous fruits shipped from California to the East. There has also been a rapid increase in the acreage devoted to the production of deciduous fruits. In 1905, 6,326 carloads of deciduous fruits were shipped out of the state. A continuous and unprecedented increase culminated in the transportation of 86,795 carloads in the year 1925 and 78,803 carloads in the year 1926. The shipment in 1926 represented an increase of more than 1200% over the volume in 1905. Carload shipments by years are as follows (R. 223):

Year	*Total*	*Grapes*
1905	6,326	1,602
1906	5,557	2,052
1907	6,459	3,460

1908	10,719	3,819
1909	13,122	5,880
1910	11,936	4,948
1911	12,539	6,374
1912	13,344	6,357
1913	13,332	6,363
1914	16,146	8,773
1915	16,778	9,563
1916	17,891	9,722
1917	24,628	13,944
1918	27,417	16,358
1919	29,971	19,228
1920	35,246	24,152
1921	40,209	28,419
1922	53,961	41,463
1923	69,777	52,339
1924	66,786	54,775
1925	86,795	71,155
1926	78,803	60,786

The record shows by affidavit (R. 104) that, in 1927, 89,835 carloads of deciduous fruits moved from California to interstate points, of which 72,330 carloads consisted of fresh grapes.

Grapes make up the bulk of the movement, and there has been a much greater increase proportionately in the shipment of grapes than of other fruits. In 1905, grapes constituted 25% of the total movement, in 1910, more than 40%, in 1920, almost 70%, and in 1926, more than 75% of the total. While the movement of deciduous fruits, other than grapes, increased 381% between 1905 and 1926, the movement

of grapes increased 3794% (R. 223). The number of acres in grapes increased from 434,907 acres in 1923 to 635,236 acres in 1926, an increase of 46% in three years (R. 64).

The production of pears, plums and grapes in California increased in the two year period from 1924 to 1926, as follows (R. 25):

Pears increased 62%;

Plums increased 82%;

Grapes increased 33-1/3%.

The annual increase in the production of deciduous fruits in the past three or four years has averaged about 12% per annum (R. 188). The present acreage planted in California to deciduous fruits is 680,000 acres, of which 30,000 acres are planted but not yet in bearing (R. 490). The great increase in the volume of grapes shipped has been due principally to the increase in the volume of so-called juice grapes —that is, grapes which are used for juice purposes, as distinguished from table purposes. The shipment of grapes for juice purposes, a negligible factor prior to the enactment of the prohibition law, has increased until, in 1926, it amounted to more than six hundred thousand tons requiring more than 40,000 cars. About 70% of all the grapes shipped are juice grapes (R. 19) and juice grapes constitute approximately 54% of the total deciduous fruit movement.

The depression in the California deciduous fruit industry.

The complainants before the Commission alleged that there was a depression in the California deciduous fruit industry and this depression had existed for five years. But it was found by the Commission, that the depression does not extend throughout the entire industry, and that the prices of peaches and apricots have materially improved (R. 25). The depression is particularly noticeable in the grape industry (R. 21, 22).

The Commission found the average price received in Eastern markets for California deciduous fruits for each year since 1917, to be as follows (R. 23):

	Average price per 100 pounds.		*Average price per 100 pounds.*
Year 1917	$5.43	Year 1922	$6.74
Year 1918	6.93	Year 1923	6.19
Year 1919	7.99	Year 1924	6.58
Year 1920	9.97	Year 1925	5.60
Year 1921	7.82	Year 1926	5.62

Practically all of the deciduous fruits shipped to the East are sold on a delivered basis (R. 49). Fluctuations in the market prices during the season sometimes equal or exceed the freight rate (R. 24). In some instances during the last few years grapes have not been picked but have been left on the vines.

Rates.

The rates for the transportation of deciduous fruits from California to the East are blanket rates. The

country between the Rocky Mountains and the Atlantic Seaboard is divided geographically into several large groups designated by the letters A to M. Group J is the most westerly group, and includes the territory in the vicinity of Denver and Cheyenne. The blanket rate covers all movement to these groups with the exception of Group J, where a somewhat lower rate is applicable, that is to say, all cars of deciduous fruit shipped to any point east of the Denver area, regardless of their destination, are transported at the same rate. The rate upon a car of fruit shipped to New York, Boston or Atlanta is the same as that upon a car shipped to Omaha, St. Louis or Chicago. The weighted average haul of all deciduous fruits in 1926, including those transported to Group J, was 2,970 miles, showing the predominance of the movement to the most easterly part of the blanket territory close to the Atlantic Coast (R. 20). The movement to Group J is relatively small, amounting in 1926 to but 627 cars out of the 74,456 cars moving in that year, or about 3/4ths of 1% of the whole (R. 19).

All parties to the proceeding before the Commission conceded that the blanket arrangement was desirable and that the traffic might be considered by its average characteristics, the small percentage moving to Group J not materially affecting these averages (R. 29).

The rates, reduction of which was ordered by the Commission, were $1.73 per 100 pounds to Groups A to M (excepting J), and $1.62 to Group J. Rates

had fluctuated to various levels prior to 1911, but in that year were voluntarily reduced by the carriers to their lowest level, $1.15 per 100 pounds. This was accompanied by an extension of the rates then applicable to the most westerly groups, to the eastern groups and resulted in the blanket rate which has since remained in effect. On June 25, 1918, the Director General of Railroads increased the rates to all groups to $1.44 per 100 pounds. Under the general increases authorized by the Commission on August 26, 1920, the rates were increased to $1.92 per 100 pounds, except to Group J, where the rate became $1.80. On January 1, 1922, by voluntary action of the carriers, the rates were reduced to $1.73 to Groups A to M, and $1.60 to Group J, which rates remained in effect until reduced by the order of the Commission, which is complained of here (R. 28). By this last mentioned order the rates were reduced, effective February 10, 1928, as follows (R. 7):

(a) The $1.73 rate was reduced to $1.60, a reduction of 13¢ per 100 pounds;

(b) The $1.62 rate was reduced to $1.50, a reduction of 12¢ per 100 pounds.

In connection with the new rate, the carriers were authorized to increase the carload minimum on grapes from 26,000 to 30,000 pounds, but no increased minimum was authorized as to other deciduous fruits (R. 59).

The rates thus ordered to be reduced had been in effect since January 1, 1922, a period of six years, and more than 400,000 cars had moved under them.

In their petition the carriers allege that the decrease in rates will result in an annual decrease in revenues of more than $2,700,000; and an annual loss in excess of $240,000, this being the difference between the cost of the traffic to the carriers and the receipts from the traffic (R. 14). The refrigeration charge is not in question here, the only rates involved being those covering freight transportation.

Proceedings before the Commission and in court.

The earlier proceeding before the Commission.

The California Growers' & Shippers' Protective League is an association of growers and shippers of deciduous fruits, having its office at San Francisco. It was the complainant before the Commission in the proceeding in which the order of the Commission here complained of was made. It had also been the complainant in an earlier proceeding against the same carriers, challenging the same rates, which had been decided in favor of the carriers. The earlier proceeding was initiated on August 31, 1923, when the Association filed a complaint (Docket No. 15137) alleging that the deciduous fruit rates were unreasonable and unduly prejudicial, in violation of Sections 1 and 3 of the Interstate Commerce Act (R. 282). After hearing, the Commission, on June 25,

1925, dismissed the complaint, finding that the rates were not unreasonable or unduly prejudicial, and that the traffic was then freely moving in interstate commerce. The report of the Commission (100 I. C. C. 79) is printed on page 281 of the Record.

The Hoch-Smith Resolution had been adopted by Congress prior to the argument in the earlier proceeding and was considered by the Commission in its opinion and disposition of the case in 1925. In its report, the Commission said (R. 315):

> "We have given consideration to the matters mentioned in the resolution."

The Commission, in its report, found further (R. 316):

> "The record in this case shows affirmatively that the deciduous fruits here under consideration are moving freely under the present rates, and that the volume of movement has increased greatly during recent years."

After mentioning the unfavorable financial return to the producers, the report continues (R. 316):

> "But this record does not justify the conclusion either that this condition is likely to continue or that it is due in great part to the rate structure. It is suggested in the record that the unfavorable financial results are chargeable in large measure to overproduction, to inability of the eastern market to absorb the supply. If this is so, economic laws, and not the rate adjustment, will sooner

or later bring about a reduction in the movement, and such reduction would be desirable."

The report then concludes (R. 317):

"* * * Considering the rates assailed as a whole, it does not appear that they are unreasonable. On the other hand, the comparisons with the rates from the Northwest and other producing sections indicate that the rates in issue are reasonable.

"We find that the rates assailed as a whole are not unreasonable or unduly prejudicial as alleged. This finding is without prejudice to any conclusion which may be reached upon the later and more comprehensive record concerning the relation of railroad rates to agriculture which is expected to be developed in Docket No. 17000.*

"An order will be entered dismissing the complaint."

An application for reconsideration filed by the complainant was denied by the full Commission on March 2, 1926.

The present proceeding before the Commission.

Less than ten months after the termination of the first proceeding, the same complainant, California Growers' & Shippers' Protective League on December 20, 1926, filed a new complaint with the Commission (R. 139) repeating the allegations of unreasonable-

*Docket 17000 referred to is the general rate investigation initiated by the Commission on its own motion for the purpose of giving effect to the Hoch-Smith Resolution. It is hereafter referred to and is not to be confused with the later proceeding before the Commission, instituted by the California Growers' & Shippers' Protective League, in which the order here complained of was made.

ness and undue prejudice contained in its former complaint, and further specially alleging that the rates were higher than the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and were in violation of the Hoch-Smith Resolution. This is the proceeding in which the order here complained of was made.

Various parties intervened, some favoring and others opposing the complaint. The Department of Agriculture and Markets of the State of New York (R. 148), the Department of Agriculture of Pennsylvania (R. 156), and the Department of Agriculture of Michigan (R. 161) intervened in opposition to the complaint. They alleged in substance that deciduous fruits, principally grapes, produced in those states, were being marketed in active competition with the California products, that the producers were now suffering from a depression, that they were faced with the loss to California producers of their natural markets, and that any reduction in the California rates would greatly aggravate the seriousness of their situation. The Arkansas Railroad Commission and the Ozark Fruit Growers Association also intervened alleging that Arkansas growers market their products in the same destination territory as the California products and that any reduction in the rates on California fruits would jeopardize the interests of growers and shippers of deciduous fruits in Arkansas unless a similar reduction was made in the rates for Arkansas products (R. 154).

After hearing, the Commission, on July 20, 1927, made its report and order (R. 16) prescribing the reduction in rates now in question. The ultimate finding of the Commission was (R. 59):

> "We are of the opinion and find upon a consideration of the whole record that the rate of $1.73 as applied to the transcontinental shipment of deciduous fruits from California to Groups A to M, inclusive, except Group J is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.60; and that the rate of $1.62 currently applicable to Group J points is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.50 and that such rates are the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and are necessary to promote the freedom of movement by defendants of the specified products of agriculture, now affected by existing depression in agriculture. In publishing these rates defendants may increase the carload minimum on grapes to 30,000 pounds."

It is the order entered upon this finding which the carriers here seek to annul.

The carriers immediately petitioned the Commission for reconsideration. On November 14, 1927, the Commission reaffirmed its previous order and made a Report on Further Consideration (R. 65).

This report concluded with the following words (R. 68):

> "On the whole record, we adhere to our former finding that the present rates are unreasonable

> and we are not convinced that the rates prescribed are below what are necessary to afford complainants the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

In the Report on Further Consideration, Commissioner Eastman who had filed a separate concurring opinion to the original report filed a dissenting opinion, in which he said (R. 68):

> "When this case was first decided, I was, as I then indicated in a concurring expression, by no means clear that the rates attacked were unreasonable, but gave complainant the benefit of the doubt because of the Hoch-Smith Resolution. The further consideration which I have since given the case leads me to agree substantially with Commissioner McManamy, who has dissented."

Commissioner McManamy also dissented.

The Proceeding in the District Court.

On November 23, 1927, the carriers affected by the order filed their petition and bill for injunction in the United States District Court, for the Northern District of California, praying that the order be annulled and further praying that the Court issue a temporary injunction restraining the execution of the order, pending final hearing on the bill (R. 1). Answers were filed by the United States (R. 75), by the Interstate Commerce Commission (R. 79), and by the California Growers' & Shippers' Protective League,

the complainant before the Commission (R. 83), which was permitted to intervene (R. 75).

The application for the temporary injunction was heard by Rudkin, Circuit Judge, and Kerrigan and St. Sure, District Judges, who, on January 18, 1928, entered an order denying the application for a temporary injunction (R. 101). At the same time they filed a memorandum opinion (R. 99), as follows:*

> "Before Rudkin, Circuit Judge; Kerrigan and St. Sure, District Judges.
>
> "The Interstate Commerce Commission reduced the rate on trancontinental shipments of deciduous fruits from California to certain eastern points from $1.73 to $1.60, and to certain other eastern points from $1.62 to $1.50 per one hundred pounds. The present suit was instituted by the large number of railroads affected by the reduction to set aside the order of the Commission and to suspend its operation during the pendency of the suit. The application for a temporary injunction is based largely on the testimony taken before the Commission and on the report made by the Commission. We have given careful consideration to the record and to the exhaustive arguments submitted on the application for the temporary injunction, and will content ourselves at this time with a mere statement of our conclusions. First, the contention that the reduced (fol. 111) rate will compel the carriers to transport this class of freight at a loss, or without substantial reward, is without support in the record. Second, the contention that the carriers are entitled to receive what would be deemed a

*Neither the opinion of the court denying the application for a temporary injunction or its opinion dismissing the bill have been printed in the official reports.

fair return on this class of freight, independently of their other business, and independently of any other consideration, is unfounded in law. 'The legislature, undoubtedly, has a wide range of discretion in the exercise of the power to prescribe reasonable charges and it is not bound to fix uniform rates for all commodities or to secure the same percentage of profit on every sort of business. There are many factors to be considered,—differences in the articles transported, the care required, the risk assumed, the value of the service, and it is obviously important that there should be reasonable adjustments and classifications. Nor is its authority hampered by the necessity of establishing such minute distinctions that the effective exercise of the rate-making power becomes impossible. It is not bound to prescribe separate rates for every individual service performed, but it may group services by fixing rates for classes of traffic. As repeatedly observed, we do not sit as a revisory board to substitute our judgment for that of the legislature, or its administrative agent, as to matters within its province. * * * The court, therefore, is not called upon to concern itself with mere details of a schedule; or review a particular tariff or schedule which yields substantial compensation for the services it embraces, when the profitableness of the intrastate business as a whole is not involved.' Nor. Pac. Ry. v. North Dakota, 236 U. S. 585-98. Third, the Commission was authorized to reduce rates on the products of agriculture before completing the thorough (fol. 112) investigation of the rate structure of common carriers, subject to the Interstate Commerce Act, as directed by the joint resolution of January 30, 1925, 43 Stat. 801, and did not otherwise misconstrue the terms of that resolution which are in a large measure directory. The application for a temporary injunction is therefore denied."

The showing on the application for a temporary injunction consisted of the record before the Commission and affidavits indicating the movement of deciduous fruits under the rates in question.

On May 2, 1928, the case was submitted on its merits on the same record. On May 9, 1928, the Court entered its decree dismissing the bill for want of equity and denying an application for a stay pending an application to the Supreme Court of the United States for a stay pending appeal (R. 107). In dismissing the bill the Court filed a memorandum, reading as follows (R. 105):

> "Before Rudkin, Circuit Judge, Kerrigan and St. Sure, District Judges
>
> "This case has been submitted to us on final hearing upon the record before us on the hearing of the application for a temporary injunction. On the first hearing we disposed of the application rather summarily, stating our conclusions in general terms, expecting at that time to review the testimony at greater length on the final hearing and to make more specific findings on the material issues in the case, or to accomplish the same result through a reference to a Special Master. But the desire of the plaintiffs to apply to the Supreme Court during its present term for a stay pending the appeal, in the event that such a stay is refused by this Court, precludes us from carrying out our original design. However, we are informed that the parties have condensed the record before us on the former hearing so as to bring it within reasonable limits and there is not the same necessity for specific findings that might otherwise exist. To the end, therefore, that the

plaintiffs may make timely application to the Supreme Court for the stay of proceedings as requested by them, we content (fol. 122) ourselves with dismissing the bill of complaint for the reasons stated in our former opinion, and the application for a stay of proceedings pending the appeal is denied. Let a decree be entered accordingly."

The carriers immediately appealed to the United States Supreme Court from the final decree dismissing the bill, and an order allowing the appeal was entered on May 10, 1928 (R. 126). On May 21, 1928, the carriers applied to this Court for a stay pending appeal, but this application was denied on May 28, 1928.

The Hoch-Smith Resolution.

The Hoch-Smith Resolution (43 Stat. 801) which forms the basis of the order of the Commission, is a joint resolution of the Senate and House, and was approved by the President on January 30, 1925.

It reads as follows:

"Chap. 120.—Joint Resolution Directing the Interstate Commerce Commission to take action relative to adjustments in the rate structure of common carriers subject to the Interstate Commerce Act, and the fixing of rates and charges.

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That it is hereby declared to be the true policy in rate making to be pursued by the Interstate Commerce Commission in

adjusting freight rates, that the conditions which at any given time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move.

"That the Interstate Commerce Commission is authorized and directed to make a thorough investigation of the rate structure of common carriers subject to the interstate commerce act, in order to determine to what extent and in what manner existing rates and charges may be unjust, unreasonable, unjustly discriminatory, or unduly preferential, thereby imposing undue burdens, or giving undue advantages as between the various localities and parts of the country, the various classes of traffic, and the various classes and kinds of commodities, and to make, in accordance with law, such changes, adjustments, and redistribution of rates and charges as may be found necessary to correct any defects so found to exist. In making any such change, adjustment, or redistribution the Commission shall give due regard, among other factors, to the general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years to a natural and proper development of the country as a whole, and to the maintenance of an adequate system of transportation. In the progress of such investigation the Commission shall, from time to time, and as expeditiously as possible, make such decisions and orders as it may find to be necessary or appropriate upon the record then made in order to place the rates upon designated classes of traffic upon a just and reasonable basis with relation to other rates. Such investigation shall be conducted with due regard to other investigations or proceedings affecting rate adjustments which may be pending before the Commission.

"In view of the existing depression in agriculture, the commission is hereby directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service: *Provided,* That no investigation or proceeding resulting from the adoption of this resolution shall be permitted to delay the decision of cases now pending before the Commission involving rates on products of agriculture, and that such cases shall be decided in accordance with this resolution."

Approved, January 30, 1925.

43 *U. S. Statutes at Large,* page 801;
Public Laws, 68th Congress, Session II, Chapter 120.

Specification of assigned errors intended to be urged and summary of points upon which the carriers rely to show that the order is invalid.

The carriers contend:

1. The order is based on the Hoch-Smith Resolution which was misconstrued and misapplied by the Commission. The Commission construed the Resolution as requiring it to reduce an existing rate on agricultural products, notwithstanding that the existing rate was reasonable, and otherwise lawful. This was a misconstruction of the Resolution. The Resolution required that the Commission reduce existing

rates on agricultural products only if such rates were found to be unreasonable or discriminatory, or otherwise unlawful as measured by the provisions of the Interstate Commerce Act.

Assignment of Error No. X (R. 112) specifies the error of the lower court in making the decree and dismissing the petition, upon the ground that the Commission found that the old rates were reasonable and not unduly prejudicial. See also Assignments of Error Nos. IX, XI and XII (R. 111, 112).

2. If the Resolution, properly construed, authorizes the Commission to reduce existing reasonable rates, such reduction is only authorized where it is "compatible with the maintenance of adequate transportation service". The Commission has interpreted this to mean that a reasonable rate may be reduced, although the carriers are not earning the fair return specified pursuant to Section 15a of the Interstate Commerce Act. This is in effect to repeal Section 15a, and is an improper interpretation of the Resolution. If the Resolution authorizes the Commission to reduce a reasonable rate where the carriers are not earning a fair return, it also requires that other rates be adjusted simultaneously so that the carriers' revenue, already inadequate, will not be impaired further.

Assignment of Error No. XLII (R. 122) specifies the error of the lower court in making the decree and dismissing the petition, upon the ground that the Commission reduced reasonable rates of the carriers, depriving them of compen-

sation and return to which they are entitled pursuant to the provisions of Section 15a of the Interstate Commerce Act, notwithstanding the fact that the carriers were not making the fair return provided for under Section 15a of the Interstate Commerce Act. See also Assignments of Error No. XXIX (R. 118) and Nos. XLI and XLV (R. 122, 123).

3. The Commission erroneously construed the provision of the Resolution respecting "freedom of movement by common carriers of the products of agriculture affected by that depression" to mean that notwithstanding a long, steady and "enormous increase in the tonnage of such fruits" moving in interstate commerce, freedom of movement did not exist unless the shippers were making a profit.

Assignment of Error No. XXV (R. 116) specifies the error of the lower court in making the decree and dismissing the petition, upon the ground that the Commission construed the Resolution and the law to authorize a reduction of the reasonable rates of the carriers to permit freedom of movement by common carriers of the products of agriculture affected by depression if the shippers involved are not making a profit, notwithstanding the movement of a large and increasing volume of traffic in the industry. See also Assignments of Error Nos. XXIV (R. 116) and XXXVI (R. 129).

4. The Commission erroneously construed the Resolution as authorizing it to find without substantial evidence that the existing rate was unreasonable, and that the new rate was the lowest possible lawful

rate, and further misconstrued the Resolution as placing upon the carriers the burden of proving that the old rate was the lowest possible lawful rate and that the new rate was lower than the lowest possible lawful rate. The order is arbitrary and invalid since the Resolution does not authorize the Commission to act without substantial evidence and does not alter the existing rule requiring the complainant to bear the burden of proof.

Assignments of Error Nos. XLVII and XLVIII (R. 124) specify the error of the lower court in making the decree and dismissing the petition, upon the ground that, in the proceeding before the Commission, the Commission imposed upon the carriers the burden of establishing that the old rates were reasonable and that the new rates were not the lowest possible lawful rates compatible with the maintenance of adequate transportation service.

5. The Commission misconstrued the Resolution in that it held that a rate which yielded the carrier an amount but slightly above operating expenses was a lawful rate. The Interstate Commerce Act and the Constitution require that each rate shall yield to the carriers all proper costs and a substantial profit.

Assignment of Error No. XXXIII (R. 119) specifies the error of the lower court in making the decree and dismissing the petition, upon the ground that the Commission fixed new rates slightly above the operating expenses of the carriers which do not afford substantial compensation to the carriers. See also Assignments of Error Nos. XXXIV and XXXVII (R. 120, 121).

6. The Commission construed the Resolution as authorizing it to regulate industry through the medium of regulating rates, and to base rates not upon the approved and accepted principles of rate making but upon whether the shipper was or was not conducting his business at a profit. Such is not a proper construction of the Resolution, but if it is, the Resolution is unconstitutional as it then constitutes a regulation of industry and not a regulation of commerce.

Assignment if Error No. XLIX (R. 124) specifies the error of the lower court in making the decree and dismissing the petition, upon the ground that the Commission based its finding that rates higher than the new rates would not be unreasonable, taking into consideration the cost and value of the service and the right of the carriers to earn a reasonable rate, but would not be unreasonable because of the existence of a depression in the business of certain shippers, the inability of the shippers to realize a profit from their shipments and the relatively prosperous financial condition of the carriers. Assignment of Error No. LI (R. 125) specifies the erroneous construction of the Resolution by the Commission as empowering it to fix rates for the purpose of regulating industrial conditions, and that the Resolution so construed is beyond the constitutional power of Congress. See also Assignments of Error Nos. VIII (R. 111), XIII and XV (R. 113), XXXVIII and XL (R. 121), XLVI (R. 123) and LII (R. 125).

7. The Commission misconstrued the Resolution in that it applied it in an isolated proceeding involving a rate on a particular commodity from a single

state, whereas it was intended to be applied only in a general rate proceeding.

> Assignment of Error No. XVIII (R. 114) specifies the error of the lower court in making the decree and dismissing the petition, upon the ground that the Commission applied supposed instructions contained in the Resolution in a proceeding which was not a general or thorough investigation of the general rate structure of the carriers. See also Assignments of Error Nos. XVII and XIX (R. 114).

8. The rate fixed is confiscatory and violates the Act and the Constitution. The Commission intended to fix a rate that would not yield a substantial profit and did in fact fix a rate which does not cover the carriers' costs or yield a substantial return.

> Assignment of Error No. II (R. 110) specifies the error of the lower court in making the decree and dismissing the petition, upon the ground that the new rates deprive, and will deprive, the carriers of their private property for public use, without just compensation, in violation of the Fifth Amendment of the Constitution of the United States. See also Assignments of Error Nos. III, IV, V and VI (R. 110) and XXI and XXII (R. 115).

ARGUMENT.

The order is based upon the Hoch-Smith Resolution.

The order of the Commission reducing the rates followed a written report of the Commission in which it stated the issues, discussed the law applicable, reviewed the evidence and made findings of fact. The

report is referred to in, and made a part of, the order, and is therefore available in determining the foundation of the order, the facts upon which the Commission acted and based its decision, and the interpretation which it placed upon the law which it considered applicable.

An examination of the Report (R. 16) and the Report on Further Consideration (R. 65) makes clear that the order is founded on the Hoch-Smith Resolution, and that the finding in the report (R. 59)——

> "That the rate of $1.73 * * * is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.60; * * * and that such rates are the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and are necessary to promote the freedom of movement by defendants of the specified products of agriculture, now affected by existing depression in agriculture."

is not based, and was not intended by the Commission to be based upon the provisions of Section 1 of the Interstate Commerce Act, which require that rates be just and reasonable, but is based upon a supposed mandate contained in the provision of the Resolution:

> "In view of the existing depression in agriculture, the commission is hereby directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with

the maintenance of adequate transportation service:"

This proceeding before the Commission was not the ordinary one to enforce the reduction of an "unreasonable" rate, violating Section 1 of the Act. It was intended, and was considered by the Commission, to be one to enforce "the lowest possible lawful rates compatible with the maintenance of adequate transportation service", enjoined by the Resolution, irrespective of whether the existing rate was reasonable or not. It is submitted therefore that the statement that the existing rate was unreasonable should not be considered as an independent finding that the rate was unreasonable but only as a finding that the old rate was in excess of "the lowest possible lawful rate" enjoined by the Resolution as interpreted by the Commission.

1. Complainant relied upon the Hoch-Smith Resolution.

The Complainant before the Commission attacked the rates as being (R. 146)

"(1) unjust and unreasonable, in violation of Section 1 of the Interstate Commerce Act, as amended, and

(2) unduly and unreasonably prejudicial, in violation of Section 3 of said Act, and

(3) higher than the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and upon an unjust and unreasonable basis with relation to other rates, in violation of the joint resolution of Con-

gress (S. J. Res. 107) commonly known and designated as the Hoch-Smith Resolution."

The complaint was filed with the Commission on December 20, 1926, less than ten months after the full Commission had denied a petition for reconsideration in the earlier case where the Commission found the identical rates (R. 317) were "not unreasonable or unduly prejudicial as alleged" (R. 18).

Early in the Report, Commissioner Aitchison states that the Hoch-Smith Resolution is "primarily relied on in the instant case" (R. 18). Further on he says: "While the complaint alleges a violation of Section 3 of the act, no great reliance was placed upon that allegation" (R. 37).

2. The evidence was directed to the Hoch-Smith Resolution.

The evidence introduced before the Commission was directed to the issues suggested by the Resolution. The report of the Commission summarizes this evidence. It points out that the complainant developed at length the trend of agriculture in California, showing that during the past thirty years much land formerly used for other purposes had been diverted to the growing of fruits and vegetables and that, should the growing of deciduous fruits become unprofitable, much of the land would go back to its native state (R. 21).

It is pointed out further that the prices of deciduous fruits had decreased so that transportation charges had become an important item of expense, and "in complainant's view the markets must be brought nearer by means of rate reductions" (R. 22). The farm values for deciduous fruits over a period of years are then reviewed and the Commission finds, "There has been since 1921 a distinct downward trend in the price levels of deciduous fruits in contrast with the upward trend of prices in the citrus-fruit industry, and in contrast with the comparative stability of the vegetable prices" (R. 22). This evidence and these findings are solely responsive to the Resolution. The Commission discussed the showing with reference to the lower prices received for deciduous fruit and states:

> "These prices are shown to us in compliance with the terms of the Hoch-Smith resolution, and to meet the statement in the prior report of our division, that 'the record herein does not show the comparative levels in market value of the various commodities over a reasonable period of years'." (R. 23)

The Commission devotes much attention to the prices received by the shippers and to the condition of the industry. It finds that "While undoubtedly overproduction and distributing practices are factors in the situation, the essential fact still remains that the industry is in serious financial straits" (R. 25) and that "complainant has established that this industry, for the past five years, has been undergoing

a period of deflation and depression, and that the years 1925 and 1926 were more unfavorable than the years preceding."

It states, "In complainant's view the existing depression in California deciduous-fruit industry is precisely such as the Hoch-Smith resolution was designed to assist" (R. 25). Again, it states, "Defendants, on the other hand, claim that if they have justified their present rates under Sections 1 and 3 of the interstate commerce act, nothing either in the Hoch-Smith resolution, or developed of record in the instant case, will provide lawful warrant for us to reduce such rates" (R. 26).

The Commission distinguishes another case, which had been cited in support of the carriers' contention that the rates were reasonable, by pointing out, "Moreover, the case was decided prior to the passage of the Hoch-Smith Resolution" (R. 41), and that "They would not necessarily constitute precedents against the granting of relief if the same rates were assailed with an adequate showing of changed and different conditions of fact, or in the basic law applicable, and do not preclude our conclusion on this record" (R. 41). The statement respecting a change "in the basic law applicable" is indicative of the Commission's view that the Resolution constituted such a change.

The contention of the carriers that a comparison with the rates on California citrus fruits which the Commission considered "at least not too high" (R.

42) showed that the deciduous fruit rates were reasonable and thus could not be reduced, was dismissed by the Commission with the statement, "But it does not follow that the earnings on citrus-fruit traffic will prevent any readjustment of the deciduous-fruit rates if present rates on the latter are not the lowest possible lawful rates compatible with the maintenance of adequate transportation service. Under the Hoch-Smith resolution the relative prosperity of an industry over a period of years may be considered as well as its relative adversity" (R. 42).

The Commission discusses at length the meaning of the expression, "freedom of movement", as used in the Resolution. The contention of the carriers, "that the charges for transportation have nothing to do with the existing economic conditions in the deciduous fruit industry" (R. 48), and that the rapid increase in the quantities shipped indicates that there is "now entire freedom of movement" is contrasted with the view of the shippers that freedom of movement, "as used in the Hoch-Smith Resolution means more than the hauling of an unprecedented volume of traffic". The Commission finds that "the record establishes that producers are sustaining serious financial loss, that their indebtedness is increasing, that they are finding it difficult to meet taxes, that banks are foreclosing or assuming the management of properties, and that land values have been entirely deflated. Under such conditions complainant contends that freedom of movement does not exist" (R. 48).

The Commission considered the effect of the proposed reduction on the industry and found that, "It it impossible to prophesy with assurance what result would flow from a reduction in rates" (R. 49), but that, "Since practically all deciduous fruits are sold on a delivered basis, complainant claims that a reduction in rates will prove of direct benefit to the producer" (R. 49). It also found, "Assuming that the reduced rate would not be reflected in reduced selling prices, the reduction here sought * * * would afford substantial relief to the growers, who bear probably the major portion of the charges directly or indirectly, and would mean the difference between a loss and a small profit to many of them" (R. 49). It is reasonable to conclude that the Commission proceeded to make its order upon this assumption.

Much space is devoted to a discussion of the condition of the carriers and their relative prosperity (R. 49-53), upon which the Commission apparently based its finding that the rates requested would be "compatible with the maintenance of adequate transportation service" as required by the Resolution (R. 56).

3. The Commission based its report and order on the Hoch-Smith Resolution.

The report clearly shows that the order is based upon the Hoch-Smith Resolution. After discussing the evidence introduced at the hearing, the Commis-

sion summarizes the divergent views of the complainant and defendants as follows (R. 25):

> "In complainant's view the existing depression in the California deciduous-fruit industry is precisely such as the Hoch-Smith resolution was designed to assist. It contends that a rate reduction will tend to foster and preserve that industry and that this result will be in the interest of a natural and proper development of the country as a whole. Defendants on the other hand claim that if they have justified their present rates under sections 1 and 3 of the interstate commerce act, nothing either in the Hoch-Smith resolution, or developed of record in the instant case, will provide lawful warrant for us to reduce such rates."

After thus setting forth the contentions of the parties as to the proper interpretation and application of the Resolution, the Commission proceeds itself to discuss and interpret the Resolution. This it does in the following language (R. 26):

> "In two recent cases we have had occasion to discuss the meaning and intent of the Hoch-Smith resolution. In *Grain and Grain Products,* 122 I. C. C. 235, 264, we said:
>
> As aforesaid, the intent of the resolution is that products of agriculture affected by depression shall move at the 'lowest possible lawful rates compatible with the maintenance of adequate transportation service.' It sets no new standard of lawfulness, but provides, in effect, that to the extent that there are flexible limits to our discretion, we shall require the maintenance of the lowest rates falling within those flexible limits. Rates that may lawfully be required must in principle

be high enough to cover all the cost that may fairly be allocated to the service plus at least some margin of profit. *Northern Pacific Ry. v. North Dakota*, 236 U. S., 585; *Norfolk and Western Ry. v. West Virginia*, 236 U. S. 605. But it has always been recognized that the burden of transportation may reasonably be adjusted with some regard to the value of the service, in other words, that the higher grade, more valuable commodities may be required to pay a greater margin of profit than those that are of lower grade and less valuable. The substance of the provision of the resolution quoted above is that agricultural products affected by depression shall in this respect be included in the class of most favored commodities, to such extent, at least, as may be 'compatible with the maintenance of adequate transportation service.'

Subsequently, in connection with similar language in *American Live Stock Asso. v. A. T. & S. F.*, 122 I. C. C. 609, 617, we further said:

In the past we have had occasion to consider at times what may be called 'out-of-pocket' cost, but while it has been contended that the carriers might voluntarily, in certain situations, establish rates covering only such cost, it has never been seriously contended that we could lawfully require this to be done. Rates that we may lawfully require must in principle be high enough to cover all the cost that may be fairly allocated to the service plus at least some margin of profit. * * * We say 'in principle,' because only rarely is definite information available as to such cost, and in practice rates must often be fixed largely by comparison with other rates. Of course, the other sections of the interstate commerce act must also be borne in mind in determining the lowest lawful rates in a particular situation.

The resolution is in effect a direction to us to give agricultural commodities affected by depression the lowest rates that it is possible to give without running counter to the provisions of the interstate commerce act and the carriers' rights under the Constitution. Section 1 of the act requires that all rates shall be just and reasonable. What is a reasonable rate? It may be said to be somewhere between the minimum charge that can be made for the service and permit the carrier to live, and the maximum charge that can be borne by the shipper. In the *Western Advance Rate Case*, 20 I. C. C. 307, pages 347, 348, we said:

What is the reasonable rate that shall be charged to the shipper? The legislature may not make rates so as to confiscate the carrier's property. The carrier, on the other hand, may not make rates which are unjust to those who by economic necessity are compelled to employ its services. Here, then, we have the minimum of legislative power and the maximum of the carrier's power. Between these lies a zone, indefinite and variable. Without question the carrier will tend toward the maximum, while governmental authority will be inclined—in fact has been created—to repress its upward tendency. One moves inevitably upward to the highest rate which the traffic will bear; the other attempts to discover some relation between charge for service and cost of service.

Both the commission and the courts have repeatedly referred to a flexible limit of judgment in reaching a conclusion as to the reasonableness of a rate or a schedule of rates. Otherwise stated, there is a zone of reasonableness within which any rate is just and reasonable to the carrier as well as just, fair, and reasonable to the shipper that utilizes the carrier's services."

This, viewed in the light of the other statements in the report, indicates with considerable exactness just what the Commission considered it was under the duty to do in applying the Resolution, and makes clear also that the Commission based its order solely upon what it deemed to be the proper interpretation and application of the Resolution.

This discussion shows that the Commission considered that the Resolution imposed upon it the duty to fix rates for the carriage of agricultural products suffering from depression at the lowest limit or level within what it called "the zone of reasonableness permitted by the flexible limits of discretion reposed in" it, and "as near the lowest limit or level of that zone as is compatible with the maintenance of adequate transportation service". The Commission deemed itself under the duty to reduce a rate on agricultural products suffering from depression, if that rate, even though reasonable, was higher than the "lowest possible lawful rate", which, as the Commission stated, was a rate slightly in excess of operating expenses. As the order was based upon the supposed mandate of the Resolution, the finding that the old rate was "unreasonable" was not a finding that the old rate was unreasonable, measured by the standards of the Interstate Commerce Act, but only that it was in excess of the "lowest possible lawful rate" enjoined by the Resolution. This is sufficiently established by the portions of the report already noted

and the further statements made by the Commission to which we will now refer.

In the report the Commission finds (R. 56):

> "Complainant has established that the growing of deciduous fruits is one of the great basic industries of California, and that this industry for the past five years has undergone a period of deflation and depression. Its economic situation is such that it clearly comes within the terms of the Hoch-Smith resolution as entitled to the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

This language is solely responsive to the Resolution.

The Commission further finds (R. 56):

> "While all the defendants who handle the bulk of the deciduous fruit traffic have not as yet made the fair return, their present financial condition is relatively strong. It seems clear that the reduction requested, if granted, would not affect the maintenance of adequate transportation service."

This is intended to be responsive to another of the requirements of the Resolution, namely, that the rate to be fixed shall be "compatible with the maintenance of adequate transportation service".

But any doubt that might exist on the question would seem to be dispelled by the statement of the issue in the case by the Commission itself (R. 56):

> "The primary issue to be determined, therefore, is whether the $1.73 rate assailed approaches the lowest limit or level of the zone of reasonableness

permitted by the flexible limit of discretion reposed in us."

This is the issue which the Commission itself stated was the "primary issue". It is the issue which the Commission decided. It did not decide or consider any other issue. As framed by the Commission, the issue is not one as to the reasonableness or unreasonableness of the rate, but is "whether the $1.73 rate assailed approaches the lowest limit or level of the zone of reasonableness permitted by the flexible limit of discretion reposed in us"; whether it was the "lowest possible lawful rate", which was defined by the Commission to be, in principle, a rate yielding at least some margin of profit and, in practice, slightly in excess of operating expenses.

In its endeavor to escape from the implications which would naturally follow from its adverse decision of the earlier application of the complainant to reduce these identical rates, the Commission summarized the changes in conditions which had occurred since the earlier decision finding these rates not unreasonable, and among them stated the following (R. 57):

"1. The Hoch-Smith resolution was approved subsequent to the presentation of the prior case.*

2. The depression in the deciduous fruit industry has continued unabated for a further period of three years and conditions in 1926 were worse than in 1923 * * *.

*Although the Report in the prior case states "We have given consideration to the matters mentioned in the Resolution" (R. 315).

3. The present economic showing is fully responsive to the terms of the resolution * * *.

6. The financial condition of the carriers principally concerned has further improved."

The ultimate finding of the Commission is on the issues as thus framed by the Commission. That finding is as follows (R. 58):

"Considering the relative rates on and earnings of the deciduous fruit traffic in the light of the condition of the industry and of the service performed by the carriers, and giving due weight to the cost study presented by defendants, we are of the view that the present rates are in excess of the lowest possible lawful rates as herein defined."

This finding falls squarely within the Resolution.

The reference to "the lowest possible lawful rate as herein defined", is clearly an allusion to the Commission's definition of such a rate as one which in principle must be high enough to cover the cost plus at least some margin of profit (R. 26).

The conclusion of the Commission as follows (R. 59):

"We are of the opinion and find upon a consideration of the whole record that the rate of $1.73 as applied to the transcontinental shipment of deciduous fruits from California to Groups A to M, inclusive, except Group J is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.60; and that the rate of $1.62 currently applicable to Group J points is,

> and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.50 and that such rates are the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and are necessary to promote the freedom of movement by defendants of the specified products of agriculture, now affected by existing depression in agriculture"

is expressed in almost the exact language of the Resolution. The expression that the existing rate is "unreasonable" is obviously a finding that it is unreasonable judged by the standards of the Resolution, as interpreted by the Commission. It is a finding that the rate then prevailing is in excess of the "lowest possible lawful rate", and is clearly not a finding that the rate is unreasonable measured by the ordinary standards prescribed by Section 1 of the Act. That this interpretation of the finding is correct is supported by the separate concurring opinions of Commissioners Woodlock, Taylor and Eastman, and the dissenting opinion of Commissioner McManamy; it is also supported by the Report on Further Consideration.

Subsequently the Commission cited this case as an example of the application of the Hoch-Smith Resolution.

Lake-Cargo Coal Cases, 139 I. C. C. 367.

The report states that four of the eleven Commissioners did not participate in the disposition of the case (R. 65). This means that seven did participate, and the affirmative vote of four was necessary to the

order. Commissioner McManamy dissented. Commissioner Woodlock, joined by Commissioner Taylor filed a separate concurring opinion, and Commissioner Eastman filed a separate concurring opinion. Two other commissioners therefore joined with Commissioner Aitchison in the principal report. The vote of one of the Commissioners filing a separate concurring opinion was necessary to the validity of the order. Commissioner Eastman, in his concurring opinion, states (R. 59):

> "While it is by no means clear that the rates in issue are unreasonable and ought to be reduced, complainant is entitled under the Hoch-Smith resolution to the benefit of the doubt, and I can for that reason accept the results reached."

We will later point out that Commissioner Eastman changed from an assenting to a dissenting opinion in the report on further consideration.

Commissioner Woodlock, with whom Commissioner Taylor concurred, in his separate concurring opinion said (R. 60):

> "The Hoch-Smith resolution (which governs the disposition of this case) contains other injunctions addressed to us besides that which requires the lowest possible lawful rate on products of agriculture suffering from depression."

Commissioner McManamy, dissenting, said (R. 63):

> "The majority report as well as the concurring expressions show that the decision is predicated upon the Hoch-Smith Resolution."

That it is permissible to refer to separate concurring or dissenting opinions in interpreting a report of the Commission is established in the case of *Southern Pacific Company v. Interstate Commerce Commission*, 219 U. S. 433.

In the Report on Further Consideration, the Commission, after admitting an error of $20.79 per car in its previous computation of the cost of carriage, and, having previously prescribed what it considered the lowest possible lawful rates, concludes (R. 68):

> "On the whole record, we adhere to our former finding that the present rates are unreasonable and we are not convinced that the rates prescribed are below what are necessary to afford complainants the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

The conclusion expressed by the Commission that the existing rates and all rates in excess of the new rates are unreasonable should not therefore be regarded as an independent finding that the old rates were unreasonable as that term is used in Section 1 of the Interstate Commerce Act.

> *United States v. New York Central Railroad*, 263 U. S. 603.

The conclusion of the Commission was directed to the issue framed and specifically stated by the Commission (R. 56):

> "The primary issue to be determined, therefore, is whether the $1.73 rate assailed approaches the

lowest limit or level of the zone of reasonableness permitted by the flexible limit of discretion reposed in us."

The conclusion was therefore based upon the Resolution as construed by the Commission and the word "unreasonable" was merely a symbol used by the Commission to express the following:

(a) That the California deciduous fruit industry is in a state of depression;

(b) That the reduced rates are necessary to permit the movement of deciduous fruit freely at a profit to the shipper;

(c) That the new rates are fixed pursuant to the mandate of the Hoch-Smith Resolution at the lowest extremity of the zone of reasonableness; and

(d) That the new rates will afford the carriers a revenue slightly in excess of operating exepnses, and although probably of less than average profitableness, shall leave the traffic attractive to the carriers (R. 67).

It is true that the Commission had before it and discussed at some length, evidence introduced by the complainant for the purpose of showing that the rate was unreasonable *per se*—that is, under Section 1 of the Act. But it is equally true that the Commission did not consider the reasonableness of the old rate to be the issue in the case and therefore did not intend to find

and did not in fact find that the old rate was unreasonable *per se*. What the Commission did was find that the $1.73 rate was not "the lowest possible lawful rate compatible with the maintenance of adequate transportation service" as defined by the Commission, and fix $1.60 as such a rate.

It will no doubt be urged that the expression in the opinion that the "rate of $1.73 * * * is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.60" is a finding that the rate is unreasonable *per se* as judged by the standard of Section 1 of the Act, and without reference to the Resolution. It is submitted that this expression, couched in the usual formal language of the Commission cannot acquire a meaning never intended by the Commission, by being lifted out of its context and segregated from the remainder of the report. This expression must be read with the rest of the report and given a meaning consistent with it. What is of importance here is not what the Commission said, but what it did. What it did was to apply the mandate of the Resolution as it interpreted it.

It is well settled that the formal findings in an order of the Commission do not conclusively determine the nature and character of the order of the Commission or conclusively fix the grounds on which it is based. The whole report may be examined to determine the real grounds on which the Commission's order is based and its nature and character. It is equally

well settled that the substance and not the mere form of the report is to be regarded in determining the theory upon which the Commission acted.

The expression of the court in *Southern Pacific Company v. Interstate Commerce Commission*, 219 U. S. 433, 444, 449, is particularly apposite here. The court defined the issue as:

> "What was the nature and character of the order made by the Commission? That is, what, in substance, was the power which the Commission exerted in making the order?"

It concluded its discussion in these words:

> "While it is true that the opinion of the Commission may contain some sentences which, when segregated from their context, may give some support to the contention that the order was based upon a consideration merely of the intrinsic unreasonableness of the rate which was condemned, we think when the opinion is considered as a whole, in the light of the condition of the record to which we have referred, it clearly results that it was based upon the belief by the Commission that it had the right, under the law, to protect lumber interests of the Willamette valley from the consequences which it was deemed would arise from a change of the rate, even if that change was from an unreasonably low rate, which had prevailed for some time, to a just and reasonable charge for the service rendered for the future. Manifestly, this was deemed by the Commission to be the power which was being exerted, since Mr. Commissioner Harlan, joined by the Chairman of the Commission, dissented on the ground that the order was an exertion of a power

not possessed, to give effect to a supposed equitable estoppel, and no language was inserted in the opinion to indicate to the contrary."

In the case mentioned the carriers had proposed an increased rate on lumber. The shippers complained and charged that the rate "was unreasonable in and of itself and discriminatory".

In its report and order the Commission had found that the proposed advance was "unreasonable" but, as pointed out above, the Court concluded that this finding was not to be considered as an independent finding that the rate was in fact unreasonable as measured by the law applicable.

In the so-called *Passenger Scrip Case, (United States v. New York Central Railroad Company,* 263 U. S. 603), the Court reviewed the action of the Commission, in applying an act of Congress directing the Commission to require the railroads to issue interchangeable mileage or scrip tickets at just and reasonable rates. After a hearing, the Commission ordered the railways to issue scrip tickets to be sold at a reduction of 20% from the face of the tickets. In holding the order of the Commission void, Mr. Justice Holmes, speaking for the Court, said:

"It is further alleged in the bill that the conclusion stated by the Commission, that the reduced rates established by it for scrip coupon tickets will be just and reasonable for that class of travel is contrary to the specific facts found by the Commission, and is not to be taken as an independent finding of fact, but only as a conclusion

> or ruling reached by it upon a misinterpretation of the law."

The Justice then pointed out that the report of the Commission showed that the Commission had not attempted to reach an independent conclusion as to whether the reduced rates were just and reasonable upon the record introduced, but that its action was based upon the supposed mandate of Congress that the tickets be sold at reduced rates, and concluded (p. 611):

> "It seems to us plain that the Commission was not prepared to make its order on independent grounds apart from the deference naturally paid to the supposed wishes of Congress."

Here it is plain that the conclusion that the existing rates were unreasonable was not based "on independent grounds", but solely upon the supposed mandate of the Resolution.

Other cases laying down the same principles are:

Cincinnati, New Orleans and Texas Pacific Railway Company v. Interstate Commerce Commission, 162 U. S. 197;

Atlantic Coast Line R. Co. v. Interstate Commerce Commission, 194 Fed. 449.

Legislative history of the Hoch-Smith Resolution.

The Hoch-Smith Resolution is a joint resolution which received the approval of the President on Jan-

uary 30, 1925. In substance it was framed by a consolidation of two resolutions proposed in Congress, one in the Senate and one in the House of Representatives.

For the purpose of determining the meaning of any ambiguity in an act of Congress it is proper to refer to its legislative history. For this purpose the reports of the Committees of either House of Congress in connection with the bill may be considered.

Binns v. United States, 194 U. S. 486, 495.

Likewise statements made by the members of committees in charge of such a bill in the course of its passage may be consulted.

Cassarello v. United States, 271 Fed. 486.

Discussion between members of the House of Representatives or of the Senate during a debate upon such a bill, and the responses made thereto by members of a committee in charge of the bill, are in the nature of a supplementary committee report and will be consulted by the court to clarify any ambiguity in the language of the bill.

United States v. St. Paul, Minneapolis & Manitoba Railway Company, 247 U. S. 310, 318.

On March 28, 1924, Senator Smith introduced Senate Joint Resolution No. 107, declaring agriculture to be the basic industry of the country, and for other purposes. It was referred to the Senate Com-

mittee on Interstate Commerce and on the same day was reported favorably by the Committee to the Senate with amendments. Before consideration by the Senate the resolution was amended, however, and was considered by the Senate, in the following form:

> "That it is hereby declared to be the true policy in rate making to be pursued by the Interstate Commerce Commission in adjusting freight rates, that the conditions which at any given time prevail in our several industries should be considered, in so far as it is legally possible to do so, to the end that commodities may freely move with fair profit to the producer and sold at a reasonable price to the consumer.
>
> "It is further declared that agriculture is the basic industry of this country; and that it is the policy of Congress to promote, encourage, and foster that industry, and especially in rate making during the existing depression in agriculture. In furtherance of these policies the Interstate Commerce Commission is hereby directed, with the least practicable delay, to effect such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service: *provided,* That no investigation or proceeding resulting from the adoption of this resolution shall be permitted to delay the decision of cases now pending before the commission involving rates on products of agriculture, and the policy herein stated shall be applied in such determination as soon as possible."

(Cong. Rec., Vol. 65, Part 8, page 8336).

During the consideration of this Bill by the Senate, Senator Smith and Senator Cummins, the authors of the resolution, explained its meaning, and in this connection Senator Smith stated as follows:

> "Permit me to state to the Senator that really there is no new proposition involved in it. It is simply a direction to the Interstate Commerce Commission that whenever there is a depression in any of the basic industries of the United States, as there has been in agriculture, the commission should take cognizance thereof, and regulate the rates so as to facilitate the movement of the products of that industry." (Cong. Rec. Vol. 65, Part 8, page 8336).

In response to a question regarding the meaning of the resolution, Senator Cummins said:

> "Undoubtedly the Interstate Commerce Commission has complete and adequate power to reduce freight rates in exact accordance with the declaration made by this joint resolution, and while the Interstate Commerce Commission has, since the 1st of September, 1920, reduced rates upon agricultural products very markedly, yet I think it is wise again to call the attention of the commission and of the country to the principle which should underlie rate making in basic commodities."
>
> (Cong. Rec., Vol. 65, Part 8, page 8337.)

Prior to the introduction of this resolution in the Senate, Representative Hoch, on December 17, 1923, had introduced in the House of Representatives a joint resolution known as House Joint Resolution

No. 94 (Cong. Rec., Vol. 65, Part 1, pages 345-6), directing the Interstate Commerce Commission to take action relative to adjustments in the railroad freight structure and the fixing of rates and charges. On January 16, 1924, Representative Hoch introduced a similar resolution known as House Joint Resolution No. 141 (Cong. Rec., Vol. 65, Part 2, pages 1070-1), directing the Interstate Commerce Commission to take action relative to the adjustments in the rate structure of common carriers. The Committee of the House on Interstate and Foreign Commerce reported favorably on this resolution on May 13, 1924 (Cong. Rec., Vol. 65, Part 8, pages 8496-7). Senate Joint Resolution No. 107 having been passed by the Senate on May 12, 1924, was referred to the House on the following day, and was considered by the Committee on Interstate and Foreign Commerce of the House. On May 27, 1924, this Committee reported Senate Joint Resolution No. 107 to the House with amendments (Cong. Rec., Vol. 65, Part 10, page 9675).

The resolution as so reported to the House consisted of a consolidation of the substance of Senate Joint Resolution No. 107 as passed by the Senate, and House Joint Resolution No. 141. In its report the House Committee summarized the intent and purpose of the resolution as follows:

> "This resolution is based upon the proposition that the present freight structure is out of adjustment, and that certain commodities, particularly agricultural products, are, in general, bearing an unfair proportion of the freight burden.

"The resolution does not propose that Congress enter upon the technical job of rate making, but directs the Interstate Commerce Commission to proceed upon the inquiry and to remove as far as possible the injustices and maladjustments that now exist. Two of the principal features of the resolution are, first, that the commission is directed in making the revision to give regard to the general and the comparative levels in the market value of the various classes and kinds of commodities as indicated over a reasonable period of years, and, second, to make such adjustments as will give regard to a natural and proper development of the country as a whole.

"The present freight structure, which has grown up piecemeal and is a result of all sorts of local considerations, has long been out of adjustment. This maladjustment has been greatly increased by the flat, horizontal percentage increases in freight rates which have been made in recent years. These flat, horizontal increases were not scientific. The method used was grounded on expediency and the need for prompt action.

* * * * * * *

"This improper distribution of the freight burden has borne particularly heavy on the products of the farm owing to the price deflation in those products. The present structure does not give proper weight to the question of what the traffic can fairly bear. The cost of the service to the carriers is not the only factor that must be considered but the value of the service to the shipper as well.

"It is realized that freight rates cannot be constantly changed in order to meet fluctuations in the market price of commodities. The resolution does not propose that that be done. It simply proposes that regard shall be given these changes in

price as indicated over a reasonable period of years.

* * * * * * *

"A year ago the United States Chamber of Commerce named a special committee to make a study of this question, and on November 14, 1923, that committee made its report. On that committee were railroad traffic managers and other officials of the carriers and prominent business men of the country. In its report the committee said:

> "'It cannot be claimed that the railroad freight rate structure of the United States has ever been organized on a scientific basis, or that it has ever been systematically revised with the purpose of eliminating disparities. The great economic changes incident to and resulting from the war have created additional disparities resulting from horizontal rate changes, from the dislocation of relative price levels, and from increases in labor costs and terminal expenses which have borne with greater weight on some classes of traffic than others. This situation renders a readjustment of relative freight rates of great immediate importance.'

"In his message to Congress in December, President Coolidge uttered this terse but comprehensive statement:

> "'Competent authorities agree that an entire reorganization of the rate structure for freight is necessary. This should be ordered at once by Congress'."

(Report No. 735, House Committee on Interstate and Foreign Commerce, May 13, 1922.)

The resolution at this time contained two paragraphs: One paragraph stated the substance of House

Joint Resolution No. 141, which directed the Interstate Commerce Commission to investigate the rate structure of the country and to make such changes as might be necessary to correct any defects therein, and directed the Commission, in making such investigation, to give due regard to certain factors, such as the general and comparative levels in market value of various commodities, the proper development of the country as a whole, and the maintenance of an adequate system of transportation. The second paragraph of the resolution directed the Interstate Commerce Commission to effect such reasonable and lawful changes in the rate structure of the country as would promote freedom of movement by common carriers of products of agriculture affected by the depression at the lowest possible *reasonable and lawful rates* compatible with the maintenance of adequate transportation service.

The resolution as it then existed did not differ substantially from the form ultimately adopted. The real purpose and effect was explained by Representative Hoch in the following language:

> "This resolution consists of two paragraphs. The first paragraph is identical with House Resolution 141, which I introduced some weeks ago and which was recently reported favorably from the committee. The second paragraph is matter taken substantially from a portion of the Senate resolution which is here amended by the House and which we have before us. The first part of this resolution proposes a general survey by the Interstate Commerce Commission of the freight structure of the country, and directs that such in-

justices and inequalities as found existing shall be corrected by the commission. It also directs the commission to take into consideration, among other things, the relation in prices of various classes and kinds of commodities as indicated over a reasonable average of years, and also does one or two other things which I will refer to later.

* * * * * * *

"The first paragraph of this resolution is in exact compliance with that recommendation, and proposes not that Congress shall make rates, for obviously Congress cannot take upon itself that technical duty, but directs the Interstate Commerce Commission to enter upon a comprehensive study and survey of the freight structure and to remove disparities and inequalities, as far as possible, without injuring adequate transportation service.

* * * * * * *

"* * * The second paragraph of this resolution is taken in substance from the Senate resolution. It makes special reference to agricultural products, including livestock. I want you to notice closely in order that there may be no misapprehension about it. I do not claim that this is any panacea or anything of that sort. It does not direct particular rates upon farm products, although I am firmly convinced that a study will show that those rates in many cases ought to be reduced, but it does call the attention of the Interstate Commerce Commission by the Congress, which has the right to speak to the commission, which is an agency of the Congress, to the great agricultural depression existing in the country and it says to the Interstate Commerce Commission:

"'We direct that you shall with the least practicable delay make such changes in the

freight rates upon farm products, including livestock, as will as far as possible correct any injustices that may be found to exist and promote the freedom of the movement of these products.'

But, as gentlemen will notice by reading the resolution, it does not contemplate that there shall be anything ruthless done; in fact, it specifically provides that it shall not interfere with the maintenance of an adequate transportation service."

(Cong. Rec., Vol. 65, Part 11, page 11019.)

Representative Hoch at the close of the debate in the House upon the Resolution as it then stood, summarized the purpose and effect of the Resolution, as follows:

"The gentlemen who say that this will not have any effect except in the far distant future are speaking without familiarity with the facts as they exist, and there is no provision here and no requirement or expectation that any rate which is not compensatory shall be levied. But certainly every one knows that there are adjustments that should be made, and this resolution provides that within reason and within the law wherever they can possibly find any adjustments that will not work injury to adequate transportation service and are in the interests of agriculture, including livestock, they shall make them; and I understand the only objection so far offered, outside of the objections of the gentleman from Alabama, by any one here, is that they are afraid that the Republican Party might possibly get a little credit for the passage of this resolution."

(Cong. Rec., Vol. 65, Part 11, page 11026.)

The Senate and the House having disagreed upon the final form of the Resolution, a Conference Committee was appointed which agreed upon the bill in its final form. As finally passed the Resolution contained three paragraphs. The first paragraph, which was taken from the original Senate Resolution is:

> "* * * That it is hereby declared to be the true policy in rate making to be pursued by the Interstate Commerce Commission in adjusting freight rates, that the conditions which at any given time prevail in our several industries shall be considered in so far as it is legally possible to do so, to the end that commodities may freely move."

In adopting this language the Conference Committee and Congress struck out the last clause of the paragraph, which provided that commodities should freely move "with fair profit to the producer and sold at a reasonable price to the consumer".

Representative Rayburn, speaking in support of the bill, stated the real purpose of this paragraph in the following language:

> "* * * Freight rates are like tariff taxes in that rates may be set so high that traffic will not move and, therefore, less revenue will be collected than there would be on a lower rate. There is a medium somewhere that is fair to all parties and that rate should be found if possible, and in the passage of this resolution we hope that the Interstate Commerce Commission may, under its direction, build a rate structure that will be fair and reasonable."
>
> (Cong. Rec., Vol. 65, Part 11, page 11023.)

The second paragraph of the Resolution as reported by the Conference Committee contained the substance of House Resolution No. 141, changed only to the extent stated by Representative Hoch, when he said:

> "The only change from the House resolution is in the latter part of the resolution, where the commission is directed to make such 'reasonable and lawful changes' in the rates on agricultural products as are consistent with the maintenance of an adequate transportation system. The word 'reasonable' is stricken out, leaving the Commission to fix such 'lawful' rates, and in the judgment of the conferees this makes no substantial change, as they believe that no rates can be fixed that are 'lawful' which are not reasonable, 'reasonable' taking into consideration all of the elements that should be taken into consideration. We have given very careful thought to it, and in our judgment it does not substantially change the law."
>
> (Cong. Rec., Vol. 65, Part 11, page 11246.)

Finally, the third paragraph of the Resolution contained the substance of the remainder of the Resolution as introduced in the Senate, altered only to the extent that the word "reasonable" is stricken out, which, as stated by the conference report, made no substantial change in the Resolution.

It should be noted that the enactment was a joint resolution approved by the President. While it is true that a joint resolution so approved has the force of law, it is proper to consider the generally recog-

nized difference between an act of Congress and a joint resolution.

> "The difference between an Act of Congress and a Joint Resolution is that the former governs all persons under the jurisdiction of the enacting power, while the latter is but a rule for the guidance of the agents and servants of the sovereign. 26 Am. & Eng. Enc. L. 560 and Notes."
>
> *S. H. Hawes & Company v. Wm. R. Trigg Co.*, (Va.) 65 S. E. 538-552; 110 Va. 165.

The true meaning and proper interpretation of the Resolution.

In the light of its legislative history, the Resolution did not alter the existing law in any respect. It contains certain instructions to the Interstate Commerce Commission, which may be summarized as follows:

(a) By the first paragraph Congress instructed the Interstate Commerce Commission that in the fixing of rates it should take into consideration the conditions which at any given time prevail in our several industries to the end that commodities should freely move. This is no new principle in rate making, but it does reflect the opinion of the Congress that the rate structure of the country had in the past been too rigid and fixed, and had not accommodated itself readily to changed and changing conditions.

(b) The second paragraph of the Resolution contains a direction to the Interstate Commerce Commission to make a thorough investigation of

the rate structure of common carriers for the purpose of determining to what extent existing rates are unjust, unreasonable, unjustly discriminatory or unduly prejudicial, and to make, in accordance with law, such changes as might be necessary to correct any defects so found to exist. This paragraph is a direction to the agents of the government to make a thorough, comprehensive and scientific study of the rate structure of the country as a whole and to make such readjustments as were necessary to eliminate the existing inequalities and defects and make it a scientific and harmonious whole.

(c) By the third paragraph of the Resolution the Commission was directed in connection with such investigation to effect, without delay, such changes in the rate structure of the country as would promote the freedom of movement by common carriers of the products of agriculture and to remove the unjust burdens placed upon agriculture by reason of the mal-adjustment of the rate structure of the country. This paragraph adds nothing to the duties of the Commission enjoined in the first two paragraphs; nor does it prescribe any new standard for rate making. The readjustment in agricultural rates was to be on the same basis and for the same fundamental reasons that any of the other readjustments were to be made, namely, that if the rates on agriculture were unreasonable or unduly burdensome, or out of adjustment, they were to be changed. But

the paragraph did direct the Commission to give its first attention to rates on agricultural products. Agriculture was suffering from depression; it was to be given first aid. This object is summarized in the report of the Committee of the House of Interstate and Foreign Commerce, as follows:

> "It is not contemplated that the commission shall wait until the whole inquiry is completed before making adjustments, but the resolution directs that from time to time they shall make such changes, in rates as justice and fairness require in view of the facts already produced."
>
> (Report No. 735, House Committee on Interstate and Foreign Commerce, May 13,1924.)

The Interstate Commerce Act, as it existed at the time the Resolution was passed, was not altered in any respect. This was recognized by the debates in Congress. Representative Shallenberger quoted from hearings in the Committee on Interstate and Foreign Commerce on the bill, and it appeared that it was the understanding of the Committee that Section 15a of the Interstate Commerce Act was not thereby altered. Representative Hoch stated that the Interstate Commerce Commission already had the power which it was directed by the resolution to exercise. Senator Cummins was of the same opinion. Representative Rayburn stated:

> "This resolution directs the Interstate Commerce Commission to do something which some

claim they have the power of doing now but which they do not care to undertake without the express direction of Congress to go into the whole rate structure of the country and try in a lawful way to iron out the inequalities that exist in that structure."

(Cong. Rec. Vol. 65, Part 11, Page 11022.)

The Resolution was based upon the belief of Congress that due to various causes the rate structure was unscientific and subject to many mal-adjustments; that parts of the structure did not conform to existing requirements of the law. An investigation of the whole structure was ordered to be made by the Commission with the special direction to determine as quickly as possible whether such illegalities affected agricultural products, and if so to remove them forthwith, since agriculture being in a depressed condition was in no condition to bear any unlawful burdens.

I. Errors of the Commission in construing and applying the Resolution.

A. The Commission construed the Resolution to require it to reduce an existing rate on agricultural products, notwithstanding that the existing rate was reasonable, and otherwise lawful. This was a misconstruction of the Resolution. The Resolution required that the Commission reduce existing rates on agricultural products only if such rates were unreasonable or discriminatory, or otherwise unlawful as measured by the provisions of the Interstate Commerce Act.

The Resolution properly construed did not change the law which existed prior to its enactment. It did not

prescribe any new or different standard of lawfulness; and it did not authorize the Commission to depart from the standards of rate making which were prescribed in the Interstate Commerce Act. The Commission, pursuing what it considered to be the intent of Congress that rates on agricultural products suffering from depression should be reduced, proceeded to reduce this rate to a point where in the view of the Commission it would yield to the carriers a return slightly exceeding operating expenses. In so doing it substituted what it considered the wishes of the Congress for the requirements of the Resolution. The situation is similar to that in the *Passenger Scrip Case* (*United States v. New York Central Railroad Company*, 263 U. S. 603, 611), where Mr. Justice Holmes aptly said in speaking of an order of the Commission directing the issue of mileage ticket at a reduced rate, "But we think it erred in reading the wishes that originated the statute as an effective term of the statute that was passed, * * *".

The purpose of those who advocated the Resolution may have been to hold out to the agricultural interests the prospect of decreased rates on the products of the farm. But the Resolution, as finally adopted, directed reductions in the rates on agricultural products only where such reductions could lawfully be made that is, where the Commission found that such rates were, for one reason or another, inherently unreasonable, or otherwise in violation of the requirements of the Interstate Commerce Act. The situation

was similar to that in the *Passenger Scrip Case* (supra), where it was said regarding a statute directing the issue of passenger scrip at reasonable rates: "Coming as it did from the agitation for this form of reduced fares, the statute naturally enough carried with it more or less mirage of fulfilling the hope that gave it rise, but in fact it required a determination of what was just and reasonable exactly as in any other case arising under the Interstate Commerce Act." And so here. The Resolution requires the fixing of a just and reasonable rate exactly as in any other case arising under the Interstate Commerce Act.

That the Resolution requires the fixing of rates on agricultural products in exactly the same way, and on exactly the same basis, as other rates, and in the manner and on the grounds prescribed in the Interstate Commerce Act, is clear from the language of the Resolution, and from its legislative history.

The Resolution in terms directed the Commission to effect such "lawful changes" in the rate structure of the country as would promote the freedom of movement by common carriers of the products of agriculture affected by depression at the lowest possible "lawful rates" compatible with the maintenance of adequate transportation service. The expressions "lawful changes in the rate structure" and "lawful rates" mean something and are in the Resolution for a purpose. Congress was careful to provide that the

changes contemplated by the Resolution were to be "lawful changes" and that rates fixed pursuant to it were to be "lawful rates." What do those expressions mean? Obviously they mean that the Commission in carrying out the mandate of the Resolution must comply with the then existing law and must make only such rates as are lawful under the existing law. "Lawful changes" mean changes permitted under the existing law. "Lawful rates" mean rates lawful under the existing law.

Congress, spurred on by the agricultural interests, which thought that agriculture was bearing an undue proportion of the freight rates, and by many, like the Chamber of Commerce of the United States, who thought that the rate structure was not on a scientific basis, and that some rates bore with greater weight on some classes of traffic than on others, and by the President, who said that an entire reorganization of the freight structure was necessary, adopted the Resolution. It directed the Commission, as the agents of the government, to revise the rate structure in accordance with existing law, to do away with the inequalities and injustices that had grown up by reason of its unscientific piecemeal growth, and to give first aid and attention to agriculture in its work of revision. But it fixed no new standards, and it did not change the existing law.

The authors and sponsors of the Resolution made this plain when it was under consideration in Con-

gress. Senator Smith said, "Permit me to state to the Senator that really there is no new proposition involved in it" (Cong. Rec. Vol. 65 part 8, page 8336). Senator Cummins said, "Undoubtedly the Interstate Commerce Commission has complete and adequate power to reduce freight rates in exact accordance with the declaration made by this joint resolution * * *" (Cong. Rec. Vol 65, part 8, page 8337). Representative Hoch, in referring particularly to the paragraph relating to rates on agricultural products, said:

> "I want you to notice closely in order that there may be no misapprehension about it. I do not claim that this is a panacea or anything of the sort. It does not direct particular rates upon farm products, although I am firmly convinced that a study will show that those rates in many cases ought to be reduced, but it does call the attention of the Interstate Commerce Commission by the Congress, which has a right to speak to the commission, which is an agency of the Congress, to the great agricultural depression existing in the country, and it says to the Interstate Commerce Commission:
>
> " 'We direct that you shall with the least practicable delay make such changes in the freight rates upon farm products, including livestock, as will as far as possible correct any injustices that may be found to exist and promote the freedom of movement of these products.' " (Cong. Rec. Vol. 65, part 11, page 11019).

There is nothing here about reducing rates on agricultural products, except in so far as it may be necessary to correct "injustices" that may be found

to exist; there is no suggestion here that such rates are to be fixed according to any new standard; there is no suggestion here that there is the slightest change in the fundamental law. All agree that the old law stands unchanged. But the Commission is given sharp orders to see that the existing law is enforced and that present injustices are corrected, first attention being given to agriculture. Such "injustices" exist only where the rates are in violation of the requirements of law, and "lawful changes" are only those necessary to correct such illegalities.

The Commission itself, in an earlier proceeding, says of the Resolution, "It sets no new standard of lawfulness * * *."

Grain and Grain Products, 122 I. C. C. 235, 264.

But in the face of all this the Commission proceeds in the present case to state, "We again conclude that 'the lowest possible lawful rates' which we may prescribe *under the resolution* on any given agricultural traffic as to which depression has been shown must be somewhere within the zone of reasonableness permitted by the flexible limits of discretion reposed in us, and that such rates must be put as near the lowest limit or level of that zone as is compatible with the maintenance of adequate transportation service" (R. 28). What this lower level or limit is in this case is apparent from the face of the report. It is a rate which "must *in principle* be high enough to cover all the cost that may fairly be allocated to the service

plus at least some margin of profit" (R. 26). It is a rate "slightly above the operating expenses," and "probably of less than average profitableness" (R. 67). It is a rate which the Commission designedly attempted to fix just high enough above the point of confiscation to escape the ban of the Fifth Amendment. At no time did the Commission intend it to be that "just and reasonable" rate mentioned in the Interstate Commerce Act, or intend to fix it upon the basis prescribed in that Act. It had already decided that the old rates were not in violation of any provision of the Interstate Commerce Act (100 I. C. C. 79). The Commission construed the Resolution as requiring it to cease exercising its discretion in so far as rates on agricultural products suffering from depression were concerned, and to perform the purely mechanical function of fixing "the minimum charge that can be made for the service and permit the carrier to live" (R. 27).

Such a construction does violence to the very terms of the Resolution, and runs counter to its meaning as explained by its authors and sponsors. The Resolution requires that the changes be "lawful changes" and that the rates be "lawful rates"; lawful in view of the existing law.

The Interstate Commerce Act and the Constitution constitute the law referred to in the Resolution.

Section 1 of the Act provides that:

> "All charges * * * shall be just and reasonable, and every unjust and unreasonable charge * * * is prohibited and declared to be unlawful";

Section 3 of the Act provides that:

> "It shall be unlawful * * * to make or give any undue or unreasonable preference or advantage * * * or to subject any particular person * * * to any undue or unreasonable prejudice or disadvantage * * *."

Section 15 of the Act provides:

> "That whenever, after full hearing, * * * under an order for investigation and hearing made by the Commission of its own initiative, * * * the Commission shall be of the opinion that any * * * rate * * * is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, * * * the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable * * * rate * * *."

These provisions fix and limit the authority of the Commission. They constituted the law governing the power of the Commission in prescribing rates at the time of the passage of the Resolution. They constitute the measure of the "lawful" changes and the "lawful rates" which the Commission was authorized to prescribe under the Resolution.

The phrase "lowest possible lawful rates" in the Resolution is not inconsistent with this interpretation. The word "lawful" is not intended to mean something different from "reasonable," or to fix a different standard than would be fixed by the use of the word "reasonable." One of the drafts of the Resolution used the expression "lowest possible reasonable and lawful rates."

Representative Hoch, in explaining why the word "reasonable" had been stricken out, said:

> "* * * In the judgment of the conferees this makes no substantial change, as they believe that no rates can be fixed that are 'lawful' which are not reasonable, 'reasonable' taking into consideration all of the elements that should be taken into consideration. We have given very careful thought to it and, in our judgment, it does not substantially change the law." (Cong. Rec. Vol. 65, part 11, page 11246).

Where, then, is the warrant for the Commission to reduce an admittedly reasonable rate? It cannot be found within the provisions of the Interstate Commerce Act.

Not only does no warrant appear in the Act for the reduction by the Commission of a reasonable rate, but it appears from the Act that the Commission is under certain affirmative duties with respect to the fixing of rates. Section 15a (2) provides:

> "In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and with reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *provided,* that the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country."

So not only do we find an utter absence of authority in the Commission to lower a reasonable rate, but we find an affirmative duty upon the Commission to initiate and establish rates which will yield the carriers, as a whole, a fair return. In order that this provision might not be construed to deprive the Commission of its power to reduce unreasonable rates, the Congress *ex industria* added the provision retaining in the Commission power to "modify or adjust any particular rate which it may find to be unjust or unreasonable."

It is submitted that when the Commission deemed itself under the duty to reduce a reasonable rate

because it was not in the judgment of the Commission "the lowest possible lawful rate" (i. e., just above the point of confiscation), it misapplied and misinterpreted the Resolution. The purpose of the Commission to reduce rates on agricultural products suffering from depression may have been laudable, but that object could only be accomplished in those cases where the existing rates were unreasonable under the existing law. Here it is plain that the existing rates were reasonable as judged by the standards of existing law and that they were so considered by the Commission. It follows that the order reducing the rates is invalid.

The Commission in this case seems to have followed the same mental processes as witness Hendrick, who testified before the Commission (R. 196).

> "There was a time when railroads begged for assistance and they got it and the farmer paid the bill. The farmer is today in exactly the same position that the railroads were then. He is asking the government of the United States and the railroads to get behind him and give him relief. The government cannot change climatic conditions, but it can change many things, among them freight rates. There ought to be a very considerable reduction in freight rates."

The wish may have been father to the thought, but the accomplishment of the wish "required a determination of what was just and reasonable exactly as

in any other case arising under the Interstate Commerce Act". *United States v. New York Central R. R.* (supra). The Commission here did not pretend to determine what was "just and reasonable" just as in any other case. It considered that Congress had prescribed a new measure, a rate barely above the point of confiscation, and it was rigidly applying that measure. In this it erred, and the order is therefore void.

B. If the Resolution properly construed authorizes the Commission to reduce existing reasonable rates, such reduction is only authorized where it is "compatible with the maintenance of adequate transportation service". The Commission has interpreted this to mean that a reasonable rate may be reduced, although the carriers are not earning the fair return specified pursuant to Section 15a. This is in effect to repeal Section 15a, and is an improper interpretation of the Resolution. If the Resolution authorizes the Commission to reduce a reasonable rate, where the carriers are not earning a fair return, it also requires that other rates be adjusted simultaneously so that the carriers' revenue already inadequate, will not be impaired further.

The Resolution directs the Commission to effect such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by depression at the lowest possible lawful rates compatible with the maintenance of adequate transportation service.

We have already pointed out that this prescribed no new standard of rate making, invested the Commis-

sion with no greater or different powers than it already possessed, and left the provisions of the Interstate Commerce Act unchanged. Perhaps it was an excess of caution that induced the Congress not only to provide that the rates prescribed under the Resolution should be "lawful changes," and the rates "lawful rates," but also to specify that such rates must be "compatible with the maintenance of adequate transportation service." These words were not picked out of the air. They are strangely like the words, "in order to provide the people of the United States with adequate transportation," which appear in Section 15a (3) of the Interstate Commerce Act. They are even more similar to the expression used in *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy Railroad Company,* 257 U. S. 563, 585, where this court in speaking of the Transportation Act said, "The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and take other important steps to maintain an adequate railway service for the people of the United States."

From the text of the Resolution it is therefore clear that the Congress intended that the Commission in proceeding under the Resolution should do nothing which would interfere with the affirmative duty imposed upon the Commission by Congress, to fix rates so that the country would be provided with an adequate system of transportation.

Until the enactment of the Transportation Act of 1920, regulation of the carriers had been repressive in character. The government was concerned merely with the prevention of certain abuses by the railroads, including the charging of unreasonable rates and discriminatory practices. The Transportation Act marked a new departure, in which for the first time the Congress recognized that railroad problems required affirmative treatment as well as repression. The affirmative policy of providing the country with an adequate system of transportation by requiring that rates be fixed so as to yield the carriers a fair return, was concretely stated in Section 15a of the Act, and may be summarized as follows:

Section 15a imposed upon the Commission the affirmative and continuing duty,

> "In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole * * * will * * * earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return * * *"

and further,

> "The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon * * *. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity * * * of enlarging such facilities, in order to provide the people of the United States with adequate transportation * * *."

The purpose and effect of this legislation has been aptly summarized by this court in the *New England Divisions Case,* 261 U. S. 184, 189, as follows:

> "Transportation Act, 1920, introduced into the federal legislation a new railroad policy. *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Co.,* 257 U. S. 563, 585. Theretofore, the effort of Congress had been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates. The 1920 Act sought to ensure, also, adequate transportation service. That such was its purpose, Congress did not leave to inference. The new purpose was expressed in unequivocal language. And to attain it, new rights, new obligations, new machinery, were created. The new provisions took a wide range. Prominent among them are those specially designed to secure a fair return on capital devoted to the transportation service. Upon the Commission, new powers were conferred and new duties were imposed."

In *Dayton-Goose Creek Railway Company v. United States,* 263 U. S. 456, 478, the court said:

> "The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution,

> their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged."

Shortly after the enactment of the Resolution, it was urged in behalf of certain shippers in a proceeding pending before the Commission, in which carriers in the Western District were seeking increases in freight rates (*Revenues in Western District Ex Parte 87*, 113 I. C. C. 3), that the Hoch-Smith Resolution,

> (1) "had the effect of repealing those portions of Section 15a of the Interstate Commerce Act on which the carriers petitions were based," and
>
> (2) "that the rates on agricultural products, including livestock, in effect at the time of the approval of the Resolution, became in effect the legislative maximum rates on those commodities, which may not be increased except upon a finding by us (the Commission) or the courts that the existing rates are confiscatory."

As to the latter contention, the Commission concluded:

> "we are of the view that we are not debarred by the resolution from affording the carriers relief through the medium of a general increase in

rates prior to the completion of the investigation under that resolution, if need for such action arises upon a clear showing of necessity. Both section 15a and the resolution must be given a construction which makes them practicable and workable. See *New England Divisions Case*, 261 U. S. 184, 197."

The contention that the Resolution repealed Section 15a was also rejected by the Commission in the following language:

"With the contention that the resolution repeals section 15a we are not in accord. The resolution has the force and effect of an act of Congress. In it there is no specific repeal of any provision of existing law, and there is no reason for holding that the resolution by implication repealed or suspended the provisions of section 15a.

"The resolution clearly points out that in making any change in accordance with its provisions, we shall give due regard 'to the maintenance of an adequate system of transportation', and that the fixation of the 'lowest possible lawful rates on products of agriculture, including livestock,' shall be 'compatible with the maintenance of adequate transportation service'. These are expressions somewhat similar to those used by the Supreme Court in decisions rendered prior to the adoption of the resolution, specifically referring to the provisions of section 15a wherein Congress indicated that in determining what would be a fair return consideration should be given, among other things, to the transportation needs of the country and the necessity of enlarging such facilities in order to provide the people with adequate transportation. See *Wisconsin R. R. Commission v. C. B. & Q. R. R. Co.*, 257 U. S. 563, 585, de-

cided February 27, 1922; *New England Division Case, supra,* page 190, February 19, 1923; *Dayton-Goose Creek Ry. v. U. S.,* 263 U. S. 456, 478, January 7, 1924. Congress could not have intended to repeal or suspend by indirection so important a provision of law as section 15a."

This was followed by the further significant statement:

> "It is provided by the resolution that we shall prescribe on products of agriculture so affected by depression, including livestock, the lowest possible lawful rates. It is contended, therefore, that the present rates thereon may not be increased unless they are found to be confiscatory. While confiscatory rates are unlawful, it does not follow that all rates which escape confiscation are lawful. As we construe the resolution, it does not prevent increases of rates on all livestock, or on all products of agriculture which are above the point of confiscation."

Evidently the view of the Commission has undergone some change since this was written (July 14, 1926) for in the instant case the Commission consciously and intentionally fixed a rate which it considered would be just above the point of confiscation.

It is clear that the Resolution did not repeal Section 15a. Not even the Commission thought that. But what attention if any did the Commission pay to Section 15a when it considered the rates in this case? What attention did it pay to the explicit provision in the Resolution that the rates must be "compatible with the maintenance of adequate transportation

service"? From the face of the report it is plain that the Commission in this case ignored its affirmative duties under Section 15a and disregarded the requirement of the Resolution that the rates be compatible with the maintenance of adequate transportation service.

The reduction ordered by the Commission deprived the carriers of annual revenue in excess of $2,700,000 per annum. This revenue was taken principally from the western carriers who handle the bulk of the traffic. The western carriers deprived of this revenue were admittedly not earning the fair return prescribed pursuant to Section 15a. We have, therefore, an order of the Commission, depriving carriers who are not earning a fair return, of revenue in excess of $2,700,000 per annum. And this reduction in revenue results not from the lowering of an unreasonable rate, but from the lowering of a reasonable rate, which was lowered because it was in excess of what the Commission considered to be the "lowest possible lawful rate compatible with the maintenance of adequate transportation service". But how can a rate be compatible with the maintenance of adequate transportation service when it is brought about through the reduction of a reasonable rate, and is accompanied by a reduction of more than $2,700,000 in the annual revenue of carriers which are not earning the fair return prescribed pursuant to Section 15a? It is submitted that the Commission in this case consciously and intentionally fixed a rate which was not com-

patible with the maintenance of adequate transportation service, and that the order is therefore void.

What the Commission set out to do and what it did.

The Commission, as has already been pointed out, set out to fix a rate "at the lowest limit or level" of the zone of reasonableness which was defined by the Commission to be at or above "the minimum charge that can be made for the service and permit the carrier to live" (R. 27). That the Commission carried out its intention with precision is shown by the Commission's own estimate of what it did. It stated (R. 67) that if the cost study of the carriers was accepted (and in its original report it did accept it),

> "it would indicate that the prescribed rates are slightly above the operating expenses and would confirm the impression obtained from comparison with other rates that the new rates, while probably of less than average profitableness, would still leave the traffic attractive to the carriers".

The new rates in the opinion of the Commission would yield something over operating expenses.

What of the condition of the carriers? The Commission finds (R. 56):

> "While all the defendants who handle the bulk of the deciduous fruit traffic have not as yet made the fair return, their financial condition is relatively strong. It seems clear that the reduction requested, if granted, would not affect the maintenance of adequate transportation service."

Bearing in mind that the expression "maintenance of adequate transportation service" has reference to the provisions of Section 15a, which place the affirmative duty upon the Commission to fix rates that will yield the carriers a fair return, how can a reduction of $2,700,000 in the revenue of carriers which the Commission admits and finds (R. 53) are not earning their fair return be compatible with the maintenance of adequate transportation service? The test is not whether the financial condition of the carriers is relatively strong. "Relatively strong" means only that the carriers are better off financially than they were during a period when their finances were in a state of demoralization. What finally determines whether there is to be adequate transportation service in the future, which is the object sought to be achieved by Section 15a, and the object sought to be protected by the specific language of the Resolution, is whether the carriers are earning a fair return. It is submitted that this statement of the Commission shows that it misconstrued the Resolution and failed to observe Section 15a when it entered its order reducing the revenue of the carriers by $2,700,000 per annum.

It is true that Section 15a does not prevent the Commission from reducing a rate which is unreasonable. That power is expressly reserved by the provision in Section 15a that "the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable".

But, as has been shown, the rate here was not unreasonable, and was not considered by the Commission to be unreasonable. It was reduced not because it was unreasonable but because the Commission considered that it was not the "lowest possible lawful rate", according to its own definition.

The Commission devoted considerable attention to the condition of the carriers. But its findings in this respect do not support its order. On the contrary, they show that the order is not "compatible with the maintenance of adequate transportation service".

The Commission found (R. 53):

> "Of the traffic involved, over one-sixth originates on short line railroads in California. At least four of these are now operating at a deficit."
>
> "The Santa Fe and the Baltimore and Ohio are the only carriers shown as having earned in excess of 5.75 per cent in 1926. For 18 principal carriers in the western district, including the Illinois Central system, the average return in 1926 was 4.43 per cent and for five principal carriers in the eastern district, 4.9 per cent. All the foregoing rates of return are computed with respect to the property investment accounts."

This compares with the 5.75% fixed by the Commission as a fair return pursuant to Section 15a (68 I. C. C. 676).

It is submitted that the Commission in fixing the new rate considered that it was authorized to reduce an existing reasonable rate, if it was not what the

Commission considered the lowest possible rate, and that it considered that it was authorized to reduce such a reasonable rate even though it deprived carriers which were not earning a fair return, of annual revenue in excess of $2,700,000. This is a misconstruction of the Resolution and a violation of law, because it is not the fixing of the "lowest possible lawful rate compatible with the maintenance of adequate transportation service", nor is it a compliance with the duty imposed upon the Commission by Section 15a to fix rates that will yield the carriers a fair return.

The very most that could be said in such a situation if the Hoch-Smith Resolution is to be given the effect contended for by the Commission would be that if carriers, not earning a fair return, are to be deprived of revenue by the reduction of a reasonable rate, such reduction must be accompanied by the simultaneous increase of other rates, so as to preserve the carriers' revenues reasonably intact. This would not be a proper construction of the Resolution, but it would come much closer to the mark than the action of the Commission in this case. No attempt was made to do that much in this case.

C. The Commission erroneously construed the provisions of the Resolution respecting "freedom of movement by common carriers of the products of agriculture affected by that depression" to mean that notwithstanding a long, steady and "enormous increase in the tonnage of such fruits" in interstate commerce, freedom of movement did not exist unless the shippers were making a profit.

The Resolution declares it to be the true policy in rate making "that conditions which at any given time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move". It further directs the Commission in view of the existing depression in agriculture "to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service * * *".

With respect to rates on agricultural products suffering from depression, the action of the Commission is directed to and limited to such changes "as will promote the freedom of movement" of such products. If freedom of movement already exists, the Resolution does not direct the Commission to make any change.

"Freedom of movement" was therefore a material issue. Indeed, it was the primary issue according to

the Commission's interpretation of the Resolution. If there was freedom of movement under the existing rates, the Commission had no authority under the Resolution to change them, unless they were unreasonable, or discriminatory as measured by the provisions of the Act.

What does the phrase "freedom of movement" mean? Does it mean the free flow of commerce unimpaired by unreasonable or discriminatory rates? Or does it require in addition that the shippers enjoy a profit on their business, notwithstanding that the rates are reasonable and that there has been a steady and unprecedented increase in the transportation of the products, and notwithstanding that the failure of the shipper to realize a profit is due not to something connected with transportation, but to overproduction by the shipper, or to the accidents of business? The latter is the construction put upon the phrase by the Commission. It is submitted that such a construction is erroneous and that the order is therefore void.

As bearing upon the proper interpretation of the Resolution, we quote the following statement made by Representative Rayburn, speaking in the House of Representatives in support of the bill:

> "* * * Freight rates are like tariff taxes in that rates may be set so high that traffic will not move and, therefore, less revenue will be collected than there would be on a lower rate. There is a medium somewhere that is fair to all parties and

that rate should be found if possible, and in the passage of this resolution we hope that the Interstate Commerce Commission may, under its direction, build a rate structure that will be fair and reasonable."

(Cong. Record, Vol. 65, Part 11, Page 11023.)

One of the outstanding facts in this case is the long continued and substantial increase in the movement of deciduous fruits under the rates here under consideration. This is shown by the number of cars moving annually since 1905, as follows (R. 223):

Year	*Total*	*Grapes*
1905	6,326	1,602
1906	5,557	2,052
1907	6,459	3,460
1908	10,719	3,819
1909	13,122	5,880
1910	11,936	4,948
1911	12,539	6,374
1912	13,344	6,357
1913	13,332	6,363
1914	16,146	8,773
1915	16,778	9,563
1916	17,891	9,722
1917	24,628	13,944
1918	27,417	16,358
1919	29,971	19,228
1920	35,246	24,152
1921	40,209	28,419

1922	53,961	41,463
1923	69,777	52,339
1924	66,786	54,775
1925	86,795	71,155
1926	78,803	60,786

The Commission found (R. 38) that there has been "an enormous increase in the tonnage of these fruits". Commissioner McManamy states (R. 65): "The record shows that each year embargoes are placed on grapes at the principal eastern cities because the supply could not be disposed of * * *."

The growth of the deciduous fruit industry in California and the capture of the country's markets by the products of California is also one of the outstanding facts of the case. The States of New York, Pennsylvania and Michigan, the principal competitors of California in fresh grapes, intervened in this case in opposition to the reduction, and their witness V. M. Parshall testified (R. 447):

> "During the past few years shipments of grapes from California have substantially increased in excess of any other representative period; California grapes are the dominating factor in every important market and their distribution covers the entire United States. On the other hand, shipments from eastern states have fluctuated during this period, and, in spite of increased consumption of grapes as a whole in important markets, the shipments from the eastern states to these markets as a whole have not shown any appreciable increase."

The same witness, after pointing out that California has certain advantages over her eastern competitors, particularly in the matter of climate, as a result of which "The California yield per vine is slightly in excess of twice that of New York and Pennsylvania", continues (R. 448):

> "It is not our purpose in this connection that California should be deprived of the natural advantages which she has as to the production of grapes. It is, however, our position that the present rate not only does not deprive California of these natural advantages, but does deprive us of the natural advantage to which we are entitled, that is, proximity to our markets."

Another witness for the eastern growers testified (R. 452) referring to the Chautauqua Erie Grape belt: "There has been no increase in this acreage in twenty years."

We have therefore a steadily increasing transportation of deciduous fruits from California to the East with the resultant capture and domination of the eastern markets by the California product, accompanied by no increase in the eastern production.

The enormous and rapid increase in the acreage devoted to the growing of California deciduous fruits is also made clear in the record. The acreage devoted to grapes increased from 434,907 acres in 1923 to 635,236 acres in 1926, an increase of 46% in three years (R. 64). The Commission found that the pro-

duction of pears, plums and grapes increased in the two year period from 1924 to 1926 as follows (R. 25):

Pears increased.....62%;
Plums increased.....82%;
Grapes increased.....33⅓%.

That the deciduous fruit industry in California is in a state of depression is a fact that is beyond dispute. That many California deciduous fruit growers, principally growers of grapes, are not prosperous is also clear. But those facts alone, viewed in the light of the enormous growth in production, the constant and heavy increase in the shipment of the fruit to the east under these rates, and the capture and domination of the eastern market by the California product, does not show that there is a lack of "freedom of movement". On the contrary, it indicates entire "freedom of movement" and offers no justification whatever for the conclusion that the depression in the California grape industry is due in any respect to any transportation condition. Rather it points to conditions within the industry itself, for which the industry is itself responsible.

The Commission has construed "freedom of movement" to mean that there is no freedom of movement regardless of the fact that cars and commodities move without interruption; it has held that there is not such freedom, though the rate is reasonable, if the growers are not making a profit and are not prosperous. It has measured freedom of movement by

comparing the depressed condition of the fruit industry with the relatively prosperous condition of the carriers and not by any transportation standard.

The matter is discussed in the opinion of the Commission (R. 48):

> "Defendants urge that the charges for transportation have nothing to do with the existing economic conditions in the deciduous-fruit industry. They believe that the proposed reduction would not relieve the growers and claim that there is now entire freedom of movement. In support of this they point to the movement of cars for the past five years as follows:
>
> 1922,.....53,961;
> 1923,.....69,777;
> 1924,.....66,786;
> 1925,.....86,795;
> 1926,.....78,803"

> "According to complainant's view, however, 'freedom of movement' as used in the Hoch-Smith resolution means more than the hauling of an unprecedented volume of traffic. The record establishes that producers are sustaining serious financial loss, that their indebtedness is increasing, that they are finding it difficult to meet taxes, that banks are foreclosing or assuming the management of properties, and that land values have been entirely deflated. Under such conditions complainant contends that freedom of movement does not exist."

This statement of complainant's contention represents the construction of the Resolution by the Com-

mission, and indicates that the Commission considers that there is no "freedom of movement" no matter how many cars or how much fruit actually moves, if the shippers are not making a profit and are sustaining serious financial loss. It is significant that there is in the report and order no direct finding that deciduous fruit is not moving freely. There is only the conclusion that the new rates fixed by the Commission "are necessary *to promote* the freedom of movement by defendants of the specified products of agriculture now affected by existing depression in agriculture."

In the earlier case, *California Growers' & Shippers' Protective League v. Southern Pacific Company*, 100 I. C. C. 79, the Commission found specifically that deciduous fruits were moving freely in interstate commerce under the existing rates (R. 316), finding:

> "The record in this case shows affirmatively that the deciduous fruits here under consideration are moving freely under the present rates, and that the volume of movement has increased greatly during recent years. Complainant's prediction that unless lower rates are secured there will be a substantial reduction in tonnage may not be realized (fols. 491-29). The prediction is based upon the unfavorable financial return to the producers at the time of the hearing, and for a period prior thereto. But this record does not justify the conclusion either that this condition is likely to continue or that it is due in great part to the rate structure. It is suggested in the record that the unfavorable financial results are chargeable in large measure to overproduction, to inability of

> the eastern market to absorb the supply. If this is so, economic laws, and not the rate adjustment, will sooner or later bring about a reduction in the movement, and such reduction would be desirable."

The earlier case showed the figures only through the year 1923. The movement during the succeeding year was slightly less than in 1923, but the 1924 movement amounted to more than 86,000 cars, almost 20,000, or over 20% in excess of 1923. In 1926, the movement was 78,803, almost 10,000 cars in excess of the 1923 movement.

The construction by the Commission that there is no freedom of movement unless the shipper is making a profit is shown to be in error by the legislative history of the Resolution. In its original form as presented to the Senate, the Resolution provided that rates should be fixed "to the end that commerce may freely move with fair profit to the producer and sell at a reasonable price to the consumer" (S. J. R. 107, as amended in the Senate). The provision "with fair profit to the producer and sell at a reasonable price to the consumer" was eliminated before the Resolution was adopted.

Commissioner McManamy in his dissenting opinion expressed what we consider is the proper construction. He says (R. 64):

> "The report discusses freedom of movement, which is another important requirement of the Hoch-Smith Resolution. * * * In 1916 the total

of carload shipments of deciduous fruits from California was 17,891 cars. In 1926 it was 78,803 cars. Of these 9,722 carloads in 1916 and 58,334 carloads in 1926 were grapes. The record shows that each year embargoes were placed on grapes at the principal eastern cities because the supply could not be disposed of and that diversions in search of a market amounted to 1.07 times per car. Surely there is no indication here that freedom of movement has been in any way restricted."

It is submitted that the Commission misconstrued the provision of the resolution respecting "freedom of movement", and that it was in error when it held that there was no freedom of movement notwithstanding the fact that the rates were reasonable, and notwithstanding the fact that there was a continuous and unprecedented increase in the quantities shipped, merely because the shippers were not making a profit. As construed by the Commission, freedom of movement would depend entirely upon the condition of the industry and not upon the fact as to whether cars were actually moving in large and increasing numbers at reasonable rates. It is submitted that this construction is erroneous and the order having been based thereon is invalid.

D. The Commission erroneously construed the Resolution as authorizing it to find without substantial evidence that the existing rate was unreasonable, and that the new rate was the lowest possible lawful rate, and further misconstrued the Resolution as placing upon the carriers the burden of proving that the old rate was the lowest possible lawful rate and that the new rate was lower than the lowest possible lawful rate. The order is arbitrary and invalid since the Resolution does not authorize the Commission to act without substantial evidence and does not alter the existing rule requiring complainant to bear the burden of proof.

As has been shown, the Commission did not attempt to find whether the old rate was reasonable or unreasonable. It considered its duty to be to fix "the lowest possible lawful rate", which it defined to be a rate which in principle must be high enough to cover all of the costs that may fairly be allocated to the service plus at least some margin of profit (R. 26). In the view of the Commission the issue was not whether the old rate was reasonable or was not reasonable; it was rather whether the old rate was the lowest possible lawful rate; if it was not the lowest possible lawful rate, it was of the opinion that the old rate must be reduced until it reached that point.

The Commission therefore set itself the task of determining two issues of fact.

First. Is the existing rate the lowest possible lawful rate?

Second. If it is not, what rate is the lowest possible lawful rate?

With such a theory of its obligations and such a visualization of the issue, the Commission assumed that it was the duty of the carriers to sustain the burden of proof.

To be sure there was much testimony introduced bearing upon the unreasonableness of the existing rate. Complainant introduced evidence to show it was unreasonable; the carriers to show the contrary. But this evidence was directed to an issue which the Commission considered not the real issue in the case.

Thus, in the view that the Commission took of its duty, it was not necessary that there be substantial evidence before it that the existing rate was unreasonable, because it did not deem that an issue. Not being interested in such inquiry, the Commission was unmindful of whether there was or was not evidence on that point.

The evidence on the question of rates introduced by the complainant fell under three general heads:

(1) An analysis and comparison of the rates upon fruits and vegetables that move from California to Eastern defined territories;

(2) A comparison of the existing rates with rates upon other perishable traffic in effect throughout the United States; and

(3) A comparison of the relative increases in rate levels on deciduous fruits and other commodities since June 24, 1928.

We will comment briefly upon the evidence in order to show the Commission's own estimate of its effect and persuasiveness, and to show that the Commission considered that the burden was upon the carriers and not upon the complainant to prove that the existing rates were not the "lowest possible lawful rates" as defined by the Commission.

Comparison with rates on fruit and vegetables.

The comparison of rates upon fruits and vegetables that move from California to eastern defined territories was, at best, inconclusive. The Commission found, after examining the comparison, that the

> "earnings per car on deciduous fruits are higher than on lemons, materially higher than on fresh vegetables and cantaloupes, but lower than on apples and citrus fruits. Considering the length of haul, the net-ton mile earnings on deciduous fruits are relatively higher than on all the other commodities, while the car-mile and gross-ton mile earnings are higher in some instances and lower in others." (R. 32)

This comparison therefore would not in and of itself justify a finding that the deciduous fruit rates were unreasonable, particularly in the face of the clear and uncontroverted testimony of the carriers as to the actual cost of carriage. And whatever it may demonstrate as to the reasonableness of the old rate, it affords no evidence whatever as to the reasonableness, lawfulness or propriety of the new rate. If the earnings from the new rate are compared with the

earnings upon other fruits and vegetables from California, it will be found that, with the exception of cantaloupes, they are lower than for any of the other commodities, and cantaloupes are given a lower rate classification for rate purposes and hence are not comparable.

If the existing rates on deciduous fruits are on the average comparable with the rates existing on other fruits and vegetables from California, such a comparison affords no evidence either that the deciduous-fruit rates are unreasonable, or that they are not the lowest possible lawful rates, particularly in the absence of a showing whether the rates with which the deciduous fruit rates are compared are, or are not, themselves the lowest possible lawful rates. It is recognized that the carriers may voluntarily publish rates which are lower than the rates that can be prescribed by the Commission.

Comparison with rates on bananas and cocoanuts.

The complainant also introduced comparisons with rates on bananas and cocoanuts from Gulf ports to Portland, Seattle, Vancouver, Los Angeles and San Francisco. But the Commission found that the movement, while substantial, was not comparable with the movement of deciduous-fruit from California to the East (R. 33). The carriers showed that the rates on bananas were influenced by the competition of water carriers from Central America. In 1925, 11,150 tons of bananas were imported through Los Angeles and San Francisco Bay ports alone (R. 34).

While under certain circumstances rate comparisons may have probative value for determining the reasonableness of a rate, such comparisons are of no value unless the rates compared exist under substantially similar circumstances. Where rates do not exist under such circumstances, they do not furnish substantial evidence of the unreasonableness of a rate.

Smyth v. Ames, 169 U. S. 466, 540;
Louisville & Nashville Railroad Company v. United States, 238 U. S. 1;
Illinois Cent. R. Co. v. Railroad Commission of Kentucky, 1 Fed. (2nd) 805.

Extension of short-haul rates.

The complainant undertook to extend the various rates on deciduous and other fruits for comparatively short hauls to the transcontinental distance in accordance with a percentage rate of progression employed by the Commission in prescribing a scale on cottonseed cake and meal in another case.

This comparison was in substance rejected by the Commission, which stated (R. 36):

> "The projection of short-haul rates for comparison with those for longer hauls, regardless of the method used, is not a very satisfactory test." and (R. 35)
>
> "Defendants criticize the progression of the scale used in projecting short haul rates, and we think with some merit."

In *Cancellation of Transcontinental Class and Commodity Rates,* 142 I. C. C. 155, the Commission cited

its report herein as authority to show that projections of this character were not proper.

Comparison of relative rate levels.

The other evidence introduced by complainant was what it termed "a comparison of relative rate levels". This comparison showed that the rates on deciduous fruits are 50.4% higher than the June 24, 1918 rates, as compared with a comparative increase on 75 commodities moving east-bound of 29% above the June 24, 1918, basis. But the Commission, in effect, also rejected this testimony, stating (R. 37):

> "Compainant's showing with respect to the percentage increase in the rates on deciduous fruits must be viewed in the light of the fact that in 1911 the rates were made uniform by reductions to the lowest rate, $1.15. The reductions to groups east of Chicago were (fol. 28) from rates as high as $1.50, and the defendants claimed represented efforts on their part to assist in building up the industry in California, situated far from the centers of consumption. The reductions in question were preceded by an increase in the minimum weight from 24,000 to 26,000 pounds. Moreover, at that time from 70 to 80 per cent of the refrigerator cars moved westbound under load."

The Commission also found the following conditions existed which operated to destroy the value of such comparisons:

> (1) "Many of these transcontinental rates were reduced in order to retain or secure traffic which would otherwise move by water"; and

(2) "Other reductions were made to permit specific competitive commodities to move or to reach certain markets" (R. 36);

And the Commission stated further (R. 36):

"The circumstances and conditions surrounding their movement are to that extent dissimilar."

(3) "As to still other reductions, the explanation of the disparity is purely historical, as on lumber, and on petroleum and petroleum products."

(4) "Fresh citrus fruits are now but 35 per cent higher than on June 24, 1918, although the voluntary reduction accorded citrus fruits was accompanied by an increase in minimum weight to 36,000 pounds" (R. 37)

(5) "Carriers claimed 'reductions in deciduous-fruit rates in 1911' represented efforts on their part to assist in building up the industry in California" (R. 37).

(6) In 1911 "from 70 to 80 per cent of the refrigerator cars" moved "westbound under load" (R. 37) in contrast to the 90% empty movement westward now prevailing".

(7) The Commission further stated that the claim of the complainants to a decrease in deciduous-fruit rates based upon the fact that in the readjustment of the increased rates in 1918 and 1920 there was greater increase on deciduous fruits relative to pre-war levels than on other commodities, and that "A similar contention was made and answered adversely in *State of Washington v. Director General,* 58 I. C. C. 701, 706" (R. 37).

Such a comparison furnishes no substantial evidence for finding that the deciduous fruit rates are unreasonable. As the Commission pointed out, the comparison is made with a pre-war deciduous fruit rate which happened to be the lowest on record, made so by the voluntary action of the carrier. No evidence was introduced to show that the pre-war rates on the other commodities, with which comparisons have been made, were reasonable or unreasonable. It also appears that the whole relationship between transcontinental rates existing prior to the war and after the war have been substantially altered by water competition through the Panama Canal and local competition in certain products.

The carriers' showing.

As compared with the complainant's, we find evidence introduced by the carriers which, in every instance, explains and distinguishes the rate comparison suggested and, in every instance, justifies the reasonableness of the rates attacked.

In addition, the carrier introduced evidence of a most persuasive and direct nature as to its actual cost of transporting deciduous fruits. This evidence was accepted by the Commission in its original report, almost without criticism, and in its supplemental report is used as the basis for a statement that the new rates will bring in a return slightly exceeding the carriers' operating expenses. As these operating expenses do not include taxes, rental of

equipment and joint facilities, it is clear that the existing rates cannot do more than cover the full costs.

The Commission's estimate of the evidence.

This in brief was all the evidence before the Commission other than the evidence respecting the depression in the fruit industry. The Commission's own estimate of the effect and persuasiveness of the evidence is shown in its report (R. 58):

> "Considering the relative rates on and earnings of the deciduous-fruit traffic in the light of the condition of the industry and of the service performed by the carriers, and giving due weight to the cost study presented by defendants, we are of the view that the present rates are in excess of the lowest possible lawful rates as herein defined."

The Commission thus definitely set down the factors which it took into consideration in finding that the "present rates are in excess of the lowest possible lawful rates as herein defined". These factors are:

> *First:* The relative rates and earnings of the deciduous fruit traffic in the light of the condition of the industry and the service performed by the carriers; and
>
> *Second:* The cost study presented by the defendants. (The Conrad Study, R. 482.)

These furnished the factual basis for the Commission's decision. What the first one means is rather

difficult to ascertain, and perhaps it was intended to be somewhat vague. The second refers, of course, to the Conrad Cost Study presented by the carriers (R. 482).

In its Report on Further Consideration, the Commission admitted that it had made an error in its computations based on the Conrad Cost Study, of $20.79 per car, and that this amount should have been added to the costs to which it had "given due weight" in arriving at its conclusions. Having admitted its error in its previous consideration of the cost study to which it had "given due weight", the Commission proceeds in its Report on Further Consideration to suggest a few questions respecting the results of the cost study which had not occurred to it when it was laboring under the mistaken belief that the carriers' own cost study furnished substantial evidence that the new rate was above the point of confiscation, and concludes (R. 67):

> "In other words, even if the cost study were accepted without question, it would indicate that the prescribed rates are slightly above the operating expenses and would confirm the impression obtained from comparisons with other rates that the new rates, while probably of less than average profitableness, would still leave the traffic attractive to the carriers."

We have, therefore, in the words just quoted, the Commission's own frank characterization of the effect upon it of the evidence.

First: If the carriers' cost study to which the Commission says it had "given due weight" is accepted without question, it would "indicate" that the new rates are slightly above operating expenses; and

Second: it "would confirm the impression" obtained from comparison with other rates that the new rates were "probably" of less than average profitableness, but would still leave the traffic attractive to the carriers.

Instead of finding upon substantial evidence that the old rates were unreasonable, and the new ones reasonable and the lowest possible lawful rates, the Commission fixed the new rates upon the "indication" that they are "slightly" above operating expenses, and upon an "impression" that they are of "less than average profitableness". No law authorizes the Commission to fix rates upon "indications" or upon "impressions". If the Commission must say of the evidence produced before it, that it merely results in an "impression", there is no substantial evidence upon which the Commission can legally act.

The Commission placed the burden of proof on the carriers.

In the concluding paragraph of the ~~Report on Fur~~ Report on Further Consideration. ~~In his separate contention that~~ the Commission ~~regarded the carriers as carrying opinion~~, he said (R. 69):

> "On the whole record, we adhere to our former finding that the present rates are unreasonable

> and we are not convinced that the rates prescribed are below what are necessary to afford complainants the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

To the same effect are the expressions by Commissioner Eastman in his concurring opinion to the original report, and in his dissenting opinion to the Report on Further Consideration. In his separate concurring opinion, he said (R. 59):

> "While it is by no means clear that the rates in issue are unreasonable and ought to be reduced, complainant is entitled under the Hoch-Smith resolution to the benefit of the doubt, and I can for that reason accept the results reached."

In his dissenting opinion in the second report, Commissioner Eastman said (R. 68):

> "When this case was first decided, I was, as I then indicated in a concurring expression, by no means clear that the rates attacked were unreasonable, but gave complainant the benefit of the doubt because of the Hoch-Smith Resolution."

It is, of course, permissible to refer to concurring or dissenting opinion of Commissioners in interpreting a report of the Commission. *Southern Pacific Company v. Interstate Commerce Commission*, 219 U. S. 433.

The Commission in fixing the new rate upon the basis of "impressions", and because the carriers had not convinced it that the new rates were below the

"lowest possible lawful rates", was not proceeding in accordance with law. Nor was Commissioner Eastman, who in his concurring opinion gave the "benefit of the doubt" to the complainant. The complaint charged that the old rates were in excess of the lowest possible lawful rates. It was incumbent on the complainant to prove that allegation by substantial competent evidence. That could be done even on the Commission's own theory of the meaning of "the lowest possible lawful rate" only by showing the cost of the service. It was not the duty of the carriers to disprove the allegation in advance of some evidence by the complainant in support thereof, and the Commission erred in assuming that the carriers were under the obligation to "convince" it that the prescribed rates were below the irreducible minimum. The burden was not on the carriers; they were not under the duty of "convincing" the Commission. The Commission proceeded upon the legal theory that if the carriers did not sustain the burden of proof, then the Commission was free to fix the rates upon "impressions" gained from the evidence. It is submitted that this finds no support either in the Resolution or the Act and that the order is therefore void.

E. The Commission misconstrued the Resolution in that it held that a rate which yielded the carrier an amount slightly above operating expenses was a lawful rate. The Interstate Commerce Act and the Constitution require that each rate shall yield to the carriers all proper costs and a substantial profit.

The Commission clearly stated (R. 56) that the primary issue before it was whether the existing rate

approached the lowest level of the discretion reposed in it by law. It construed the Resolution to direct it to fix, and it deliberately endeavored to ascertain and fix, the lowest possible rate permitted by the Constitution.

As a preliminary to the discussion of the evidence, it expressed its opinion as to the meaning of the lowest possible rate which it could fix, and stated in clear and unmistakable language that this was the the rate which it was obliged to fix. In this connection we find, in the report of the Commission (R. 27) the following:

> "The resolution is in effect a direction to us to give agricultural commodities affected by depression the lowest rates that it is possible to give without running counter to the provisions of the interstate commerce act and the carriers' rights under the Constitution. Section 1 of the act requires that all rates shall be just and reasonable. What is a reasonable rate? It may be said to be somewhere between *the minimum charge that can be made for the service and permit the carrier to live,* and the maximum charge that can be borne by the shipper * * *."

It quoted its own prior reports as to the purpose of the Resolution and as to its duty thereunder to fix the lowest possible lawful rate, a rate, so the Commission held, which would yield to the carrier a slight return over operating costs (R. 26).

The Commission, having stated that the lowest limit of its discretion in fixing a rate was one which

would return to the carrier some margin of profit, framed the issue thus:

> "* * * whether the $1.73 rate assailed approaches the lowest limit or level of the zone of reasonableness permitted by the flexible limit of discretion reposed in us." (R. 56)

Its final judgment was that the existing rate was not the lowest possible lawful rate (R. 58). It fixed the new rate as the "lowest possible lawful rate compatible with the maintenance of adequate transportation service" (R. 59).

In its Report on Further Consideration (R. 65) the Commission, correcting an error of $20.79 which it had made in the estimate of certain costs of the carriers for each car in the service involved, reached the conclusion that the sum of $55.91 would be available at the present rates,

> "for taxes, rental of equipment or joint facilities, and interest and this difference would not be eliminated by the prescribed reductions, especially if we assume that the increased minimum load would make some increase in the average revenue per car. In other words, even if the cost study were accepted without question, it would indicate that the prescribed rates *are slightly above the operating expenses* and would confirm the impression obtained from comparisons with other rates that the new rates, while probably of less than average profitableness, would still leave the traffic attractive to the carriers." (R. 67)

The Report of the Commission and its Report on Further Consideration thus established that the Com-

mission believed a rate to be lawful when it returned to the carrier an amount only "slightly above operating expenses". Not only did the Commission express the controlling rule in this form, but it sought to ascertain and fix a rate which would yield to the carriers only a *slight* profit.

It erred in its understanding of the pertinent rule of law. Not only does the Interstate Commerce Act prescribe that rates shall be reasonable, but the carriers are guaranteed by the Constitution the right to establish rates which will yield a substantial profit.

The property of the carriers, although dedicated to a public use, is held in private ownership and is subject only to reasonable control and regulation by the Government.

> "The State is without power to require the traffic covered by the fare enjoined to be carried at a loss or without *substantial* compensation over its proper cost."
>
> *Banton v. Belt Line Railway Corp.*, 268 U. S. 413, 421.

In *Norfolk and Western Railway Company v. West Virginia*, 236 U. S. 605, it was sought by governmental regulation to require a carrier to render a service at a rate which would yield but a slight profit. In that case, 97.4203 per cent of the return to the carrier was consumed by expenses incurred in rendering the service. The margin of two and one-half per cent was held to be so slight that the court regarded the property

of the carrier to have been taken as violation of its constitutional right. The court said, at page 614:

> "It is apparent, from every point of view that this record permits, that the statutory rate at most affords a very narrow margin over the cost of the traffic. It is manifestly not a case where substantial compensation is permitted and where we are asked to enter the domain of the legislative discretion; nor is it one in which it is necessary to determine the value of the property employed in the intrastate business. It is clear that by the reduction in rates the company is forced to carry passengers, if not at or below cost, with merely a nominal reward considering the the volume of the traffic affected. We find no basis whatever upon which the rate can be supported, and it must be concluded, in the light of the principles governing the regulation of rates, that state exceeded its power in opposing it."

In the case of *Northern Pacific Railway Company v. North Dakota*, 236 U. S. 585, decided on the same day as the case of *Norfolk & Western Ry. v. West Virginia*, supra, the Supreme Court affirmed the principle that a rate fixed by governmental authority to be reasonable must accord to the carrier a substantial return upon the property devoted to the particular service. The legislature of North Dakota had fixed certain maximum intrastate rates which carriers might charge. It was sought to justify the statute as a declaration of public policy to aid in the development of a local industry. Mr. Justice Hughes, delivering the opinion of the court, said (598):

"We cannot reach the conclusion that the rate in question is to be supported upon the ground of public policy if, upon the facts found, it should be deemed to be less than reasonable.

"* * * But a different question arises when the state has segregated a commodity, or a class of traffic, and has attempted to compel the carrier to transport it at a loss or *without substantial compensation*, even though the entire traffic to which the rate is applied is taken into account.

"* * * For, if the carrier's total income enables it to declare a dividend, that would not justify an order requiring it to haul one class of goods for nothing, or for less than a reasonable rate."

See also

Interstate Commerce Commission v. Union Pacific Railroad Company, 222 U. S. 541, 549.

The Commission in this case failed to observe the principles announced in the cases cited. Its conception of the applicable law was that its duty was to fix a rate which would return some profit to the carrier, however slight. If the Commission had properly construed the law and had endeavored to ascertain and fix a rate which would return to the carrier a substantial profit, it seems clear from the report and from its decision in the prior case (100 I. C. C. 79) that the Commission would not have fixed a rate lower than the rate which was attacked in this proceeding.

But whether it be true or not that the Commission regarded the old rate as not inherently unreasonable, the showing that the Commission misconstrued and

misapplied the law applicable to the problem renders the order invalid. It fixed the new rate by the application of an unwarranted construction of the law. Its error is fundamental and the result is an arbitrary and unjustified rate. Even if the court should conclude that there was evidence which justifies the new rate, even if the court should be of the opinion that the new rate is not confiscatory, the court may not correct the error by itself fixing the carriers' rates. Had the Commission been guided by correct legal principles in fixing the new rate, it is impossible to determine what the resultant rate would have been. Obviously it would have fixed a higher rate than it did. The application of a faulty measure of power and duty vitiated the rate fixed beyond the power of a reviewing court to correct, save by annulling the order.

F. The Commission construed the Resolution as authorizing it to regulate industry through the medium of regulating rates, and to base rates not upon the approved and accepted principles of rate making but upon whether the shipper was or was not conducting his business at a profit. Such is not a proper construction of the Resolution, but if it is, the Resolution is unconstitutional as it then constitutes a regulation of industry and not a regulation of commerce.

It has already been shown that the Resolution properly construed did not change the law existing at the time of its enactment and that the Commission in applying it was limited to the standards prescribed in the Intersate Commerce Act. *Anchor Coal Co. v.*

United States, 25 Fed. (2nd) 462. But the Commission thought otherwise. It construed the Resolution in this case as authorizing it to reduce a reasonable rate in order to help the deciduous fruit growers in California.

The Commission in its report, after discussing the depressed condition of the deciduous fruit industry in California, referred to the claim of the complainant that a reduction of the old rates would prove a direct benefit to the producer of deciduous fruit in California (R. 49). After discussing the effect of certain rate reductions upon the prosperity of other industries, the Commission stated (R. 49):

> "Assuming that the reduced rate would not be reflected in reduced selling prices, the reduction here sought, amounting to 29 cents per 100 pounds or $5.80 per ton on the bulk of the traffic, would afford substantial relief to the growers, who bear probably the major portion of charges directly or indirectly, and would mean the difference between a loss and a small profit to many of them."

This clearly indicates that it was the view of the Commission that the reduction in rates, at the expense of the carriers, would accrue to the benefit of the shippers, and would as to many turn their losses into profits.

If the Hoch-Smith Resolution is to be so construed, it is open to serious constitutional objections. Congress under the power to regulate commerce cannot

deprive a carrier of its earnings to be devoted to a purpose not germane to the regulation of commerce.

1. Congress has not given power to fix rates on the basis of regulating business.

Under the Interstate Commerce Act, no power is given the Commission to regulate the policy of business, to encourage weak industries, to give aid to those in need. It has frequently been held that a rate cannot be based upon the reason that it is to the advantage or disadvantage of certain industries or localities.

Thus in

Interstate Commerce Commission v. Diffenbaugh, 222 U. S. 42,

Mr. Justice Holmes says:

> "The law does not attempt to equalize fortune, opportunities or abilities."

The Commission itself has declared that:

> "The power has not been lodged with this tribunal to equalize economic advantages, to place one market in competition with another, or to treat all railroads as part of one great whole."
>
> *Ashland Fire Brick Company v. Southern Railway Company*, 22 I. C. C. 115, 121.

In *Northern Pacific Railway Company v. North Dakota*, 236 U. S. 585, 598, Mr. Justice Hughes said:

> "Certainly it could not be said that the carrier may be required to charge excessive rates to some

in order that others may be served at a rate unreasonably low. That would be but arbitrary action."

In *Interstate Commerce Commission v. Union Pacific Railroad Company*, 222 U. S. 541, 553, 555, the court's opinion indicates that it would be wrong to base a rate upon the condition of the lumber business.

In *Southern Pacific Co. v. Interstate Commerce Commission*, 219 U. S. 433, the court set aside an order of the Commission which declared unreasonable an increased rate on lumber. The carrier insisted that, "although the order made by the Commission may have been couched in a form which would cause it, superficially considered, to appear to be but the exercise of an authority to correct an unreasonable rate," yet in effect it "was based upon the assumption by that body of the possession of a power not conferred by law" (p. 443). It also insisted that the order of the Commission was void because it "did not merely exert the power conferred by law to correct an unjust and unreasonable rate", but that it made the order "upon the theory that the power was possessed to set aside a just and reasonable rate lawfully fixed by a railroad whenever the Commission deemed that it would be equitable to shippers in a particular district to put in force a reduced rate."

The court held that the Commission's order, in effect, "was based upon the belief by the Commission

that it had the right under the law to protect the lumber interests of the Willamette Valley from the consequences which it was deemed would arise from a change of the rate" (p. 449). This misinterpretation of its powers rendered void the order resulting from such misinterpretation. The opinion, quoting counsel's characterization of the power exerted, terms it "an abnormal and extraordinary power", and one "which, if it obtained would open a vast field for the exercise of discretion, to the destruction of private property in railroads", one which "would in effect assert public ownership without any of the responsibilities which ownership would imply" (p. 444).

The case was referred to in the case of

Chicago, Rock Island & Pacific Railway Company v. United States, 274 U. S. 29, 33.

Mr. Justice Sutherland says of it:

> "In that case (*S. P. Co. v. Interstate Commerce Commission,* 219 U. S. 443) it appeared upon the face of the record that the commission had not exerted its power to correct an unjust and unreasonable rate, but had made the order complained of upon the theory that it possessed the power to set aside a just and reasonable rate whenever the commission deemed that it would be equitable to shippers in a particular district to put in force a reduced rate."

Justice Pitney, in his dissenting opinion, in

Wilson v. New, 243 U. S. 332, 335,

concurred in by Mr. Justice Van Devanter, quotes with approval the opinion in the Willamette Valley case:

> "In *Southern Pacific Co. v. Interstate Com. Comm.,* 219 U. S. 433, 444, reference was made to the unwarranted assertion by the Commission of 'a power which if it obtained would open a vast field for the exercise of discretion, to the destruction of rights of private property in railroads, and would in effect assert public ownership without any of the responsibilities which ownership would imply'."

In the *Assigned Car Cases,* 274 U. S. 564, Mr. Justice McReynolds in his dissenting opinion, claiming that an order of the Commission in regard to car assignments among the coal mines was in excess of the Commission's power, recognized the principle that regulation either of rates or of service must not be based upon the necessities of particular businesses. He says (pp. 585, 587):

> "To me it seems plain enough that the real purpose of the order was not rationally to control distribution of cars during times of shortage, but to force railroads and other large consumers to apportion their purchases of coal among a larger number of producers and thus advantage mines from which such consumers preferred not to buy. Both carrier and large manufacturer

must have steady supplies of suitable coal, and it may be highly important to obtain these from one or a few approved mines. But if such mines are to be denied fuel and private cars during times of shortage, then for their reasonable protection these great consumers probably will endeavor to scatter their orders. * * *

The railroads of the country are private property. They must be operated by their owners according to law under supervision of the Interstate Commerce Commission; but that body is not intrusted with their management and ought not to be permitted to assume it under any guise * * * If, * * * as I must think, the real purpose was to force large consumers to scatter their purchases, the order goes beyond any power entrusted to the Commission."

The majority of the court in the *Assigned Car Cases* sustained the action of the Commission, but they did so on a different interpretation of the Commission's action than that placed upon it by Mr. Justice McReynolds. However, Mr. Justice Brandeis, who delivered the court's opinion, recognizes that the Commission may not, under the guise of regulating carrier instrumentalities, "equalize industrial fortune and opportunity" (274 U. S. at p. 583). But he finds that the object and effect of the rule of the Commission "was not to equalize fortunes but to prevent an unjust discrimination in the use of transportation facilities and to improve the service". There is no difference as to the view that both the

majority of the court and the dissenting Justice held as to the impropriety of regulating economic conditions through the action of a federal commission vested with power to fix just and reasonable rates and to prevent discriminatory practices in the conduct of the carrier's business.

In *United States v. Illinois Central Railroad Company*, 263 U. S. 515, 524, the court says:

> "The law does not attempt to equalize opportunities among localities."

In *Cincinnati, New Orleans and Texas and Pacific Ry. v. Interstate Commerce Commission*, 162 U. S. 184, 221, the court held that the Commission has not the power to reinforce the tariff laws, so as to give protection to American manufacturers and producers from competition by foreign low-priced labor. The tariff laws, said the court, "differ wholly in their objects from the law to regulate commerce. Their main purpose is to collect revenues with which to meet the expenditures of the government" (p. 220). "Moreover, their provisions operate with absolute equality in all parts of the country."

In *McLean Lumber Co. v. United States*, 237 Fed. 460, 470, before Circuit Judge Warrington, and District Judges McCall and Sanford, the court said:

> "* * *It is the duty of the Commission, in passing on the reasonableness of a rate, to consider the

conditions affecting the welfare both of the shippers and the carriers. *Texas Railroad v. Interstate Commission,* 162 U. S. 197, 219 * * *. However, the carrier is not to be denied the right to change from an unreasonably low rate, which has formerly prevailed, to a just and reasonable charge for the future, merely because of the injurious consequences which would arise to shippers from a change in the rate. *Southern Pacific Co. v. Interstate Commission,* 219 U. S. 433, 449 * * *; *Atchison Railroad v. Interstate Commission* (Comm. Ct.) 190 Fed. 591, 594, and 203 Fed. 56, affirmed * * * 231 U. S. 736; and *Rates on Crushed Stone,* 29 I. C. C. 136."

In *Atchison, T. & S. F. Ry. Co. v. Interstate Commerce Commission,* 190 Fed. 591, the Commerce Court held void an order reducing the rate on lemons. The rate had been reduced to a point at which, in the judgment of the Commission, California growers might successfully compete with their Sicilian competitors in a broader market than would otherwise be possible. "In other words", to quote from the opinion of the Court, "the Commission acted upon the erroneous assumption that it had the power and the right, if not the duty, so to adjust railroad rates as would give to the American industry protection against foreign competition". The court further said:

> "The authority granted it under Section 15 of the act to regulate commerce to prescribe reasonable rates when it shall be of the opinion that the act to regulate commerce to prescribe reason-

does not confer absolute or arbitrary power to act on any consideration which the Commission may deem best for the public, the shippers and the carrier. Its order must be based on transportation considerations * * *.

"As in our judgment the order is based primarily on the assumed authority to protect the industry against foreign competition, it must be held void as beyond the powers delegated to the commission."

The matter was later reopened before the Commission when, after hearing, it found the rate "inherently unreasonable on transportation considerations alone, irrespective of any question of tariff protection." Its action was sustained by the Commerce Court in 203 Fed. 56, affirmed without opinion, 231 U. S. 736.

The repeated declarations by the court to the effect that the purpose of rate-making is not to "equalize fortune or opportunities"; criticisms of action by administrative bodies regulating rates as being taken "for the purpose of equalizing industrial conditions"; the reference to the exercise of such a function as "abnormal", "unprecedented", "extraordinary", "arbitrary action", plainly indicate, what is already clear from the language of the acts regulating interstate commerce, that the granting of aid directly to a "distressed industry", through the agency of rate regulation is forbidden by existing legislation. It is beyond

the power of Congress to enact legislation that would authorize rates to be lowered for the benefit of one industry and that would require the deficit in the income of carriers, necessary to produce the reasonable return to which they are entitled, to be made up by imposition of higher rates upon other industries. To permit such a principle of rate-making would lead government into dangerous experiments and would tend to great injustice and disarrangements in the affairs of industry and agriculture.

2. The power to regulate commerce is subject to the limitations of the Constitution.

The power of Congress to regulate commerce is not absolute, but is subject to the limitations of the Constitution and must be exercised in subordination to the guarantees and limitations of that instrument.

As was said by Justice Brewer in *Monongahela Navigation Company v. United States*, 148 U. S. 312, 336:

> "It cannot be doubted in view of the long list of authorities—for many more might be cited—that Congress has the power in its discretion to compel the removal of this lock and dam as obstructions to the navigation of the river, or to condemn and take them for the purpose of promoting its navigability. In other words, it is within the competency of Congress to make such provision respecting the improvement of the Monongahela

River as in its judgment the public interests demand. Its dominion is supreme.

"But like the other powers granted to Congress by the Constitution, the power to regulate commerce is subject to all the limitations imposed by that instrument and among them is that of the Fifth Amendment, we have heretofore quoted. Congress has supreme control over the regulation of commerce, but if, in exercising that supreme control, it deems it necessary to take private property, then it must proceed subject to the limitations imposed by this Fifth Amendment, and can take only on payment of just compensation."

Chief Justice Marshall in *Gibbons v. Ogden,* 9 Wheat. 1, 196, 197, speaking of the power to regulate commerce, says:

"* * * This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the constitution. * * * If, as has always been understood, the sovereignty of Congress, though limited to specific objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several states, is vested in congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States."

In the *Lottery Case,* 188 U. S. 321, 353, the language of Chief Justice Marshall is paraphrased (see also pp. 362, 363).

The same principle is expressed in somewhat different language in

The Employers' Liability Cases, 207 U. S. 463, 502.

Even though an act of Congress be a regulation of commerce.

> "* * * it is void if it conflicts with the provisions of the Fifth Amendment, that no person shall be 'deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation'."

Wilson v. New, 243 U. S. 332, 365, 376, 383;
Adair v. United States, 208 U. S. 160, 180;
United States v. Cress, 243 U. S. 316, 320;
United States v. Lynah, 188 U. S. 445, 465, 471.

3. The construction given the Resolution by the Commission would violate the Fifth Amendment to the Constitution.

If the Hoch-Smith Resolution be construed so as to authorize the earnings of the carriers, their private property, to be taken from them for the purpose of giving a bounty to a private industry, the deciduous fruit growers, it would seem that the provisions of the Fifth Amendment to the Constitution would be violated. The Carriers would be deprived of their

property without compensation for the benefit of other holders of property.

The court has repeatedly condemned legislation of this nature.

Thus in *Loan Association v. Topeka,* 20 Wall 655, statutes of Kansas authorized the issuance of bonds by towns and municipalities for the interest and principal of which the citizens of the towns and municipalities and their property would be liable under the power of taxation. The bonds so issued were, under the statutes referred to, to be used in encouraging private enterprises in the towns and cities affected.

Justice Miller, in delivering the opinion of the court holding the statute unconstitutional and void, employed the strongest possible language of condemnation. At page 664, he says:

> "To lay with one hand the power of the government on the bounty of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms."

And again, at page 665, referring to the claim that the encouragement of business redounds to the benefit

of the people taxed, he says:

> "* * * If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizen by forced contributions. No line can be drawn in favor of the manufacturer which would not open the coffers of the public treasury to the importunities of two-thirds of the business men of the city or town."

If the Resolution requires the Commission to reduce the earnings of the carrier solely to give the benefit of the reduction to the fruit growers, or other agriculturalists who may be suffering financial loss by reason of the condition of their industry, the evils which Justice Miller pointed out in *Loan Association v. Topeka* will result, and the effect of that decision can scarcely be escaped.

The last named case, it is true, involved an unauthorized exercise of the taxing power by a State, whereas an Act of Congress directing a Commission to reduce the rates charged by carriers privately owned in favor of special industries might involve the question of regulation of commerce. But it must be remembered that the earnings of a carrier are private

property. The "recapture clause" in the Transportation Act of 1920, which was sustained in *Dayton-Goose Creek Railway Company v. United States,* 263 U. S. 456, recognizes that the excess of income over a fair return never becomes the absolute property of the carrier. It gets only the possession and holds such income as trustee for the purposes defined in the Transportation Act. These "trusts" all exist for the direct benefit of the carriers, for the system of transportation generally. But the case would be quite different were the income taken from a carrier to give to private interests, to subsidize weak industries, to aid private citizens laboring under financial disabilities.

It is scarcely necessary to point out that there is a wide difference between the control that the courts may exercise in respect to the action of a body like the Interstate Commerce Commission, which regulates or supervises the conduct of public service businesses, owned and managed by private persons, and the control over officers, boards or commissions dealing with purely governmental functions, like the post office department.

In *Missouri K. & T. R. Co. v. Interstate Commerce Commission,* 164 Fed. 645, 648, it is said by a court composed of Circuit Judges Van Devanter, Hook and Adams:

> "The power conferred upon the commission is at most one merely regulatory of existing vested rights and is therefore quite distinguishable from the powers conferred upon the General Land Office, the Pension Office, and other like departmental bureaus; for the latter are not engaged in administering laws which are regulatory of existing vested rights, but in executing laws relating to the disposal of the public lands of the nation, to the distribution of its bounty, and to other subjects in respect of which the power of Congress is not subject to the constitutional restrictions before named * * *."

The power to grant aid, under the taxing power, to private business was much discussed in connection with the so-called "Sugar bounties" under the Revenue Act of October 1, 1890, commonly called the McKinley Bill.

In *Miles Planting Co. v. Carlisle,* 5 App. Cases, Dist. of Col. 138, 139, Mr. Justice Shepard said:

> "If Congress be conceded the power to grant subsidies from the public revenues to all objects it may deem to be for the general welfare, then it follows that this discretion, like all admitted powers of taxation, is absolute. Such a doctrine would destroy the idea that this is a government of delegated, limited and enumerated powers, render superfluous all the special delegation of power contained in the constitution, and open the way for a flood of socialistic legislation, the specious plea for all of which has ever been the general welfare. It is a doctrine that we cannot subscribe to."

The court believed that the decision in *Loan Association v. Topeka* required the determination that the Act of Congress so far as it established sugar bounties was in violation of the Fifth Amendment. Many decisions of the Supreme Court of the States are cited and quoted.

In *Jones v. City of Portland,* 245 U. S. 217, 221, Justice Day said:

> "* * * It is well settled that moneys for other than public purposes cannot be raised by taxation, and that exertion of the taxing powers for merely private purposes is beyond the authority of the State. * * *"

The authority of *Loan Association v. Topeka* was also recognized in *Green v. Frazier,* 253 U. S. 233, 242.

While the question of the validity of the sugar bounties came before the Supreme Court in two cases, it was not necessary in either case for the Court to pass upon the question. The "bounties" were repealed by Congress in 1894.

In *Field v. Clark,* 143 U. S. 649, 694, the bounties clause was attacked under the claim that it rendered the whole tariff act, of which it was a part, invalid. The Court held that if it were unconstitutional, it was so clearly separable from the other parts of the act

that it did not render the act open to attack on this ground.

Again, the Supreme Court had the bounty act before it, incidentally, in

United States v. Realty Company, 163 U. S. 427.

The question there was whether manufacturers of sugar who had done all the acts required to entitle them to the bounties were to be deprived of the bounties by the repeal of the Act of 1890. The Court held that regardless of the invalidity of the act, persons who in good faith had manufactured sugar under the expectation of receiving the bounties had an honorable or moral claim. This claim was recognized by Congress under legislation passed in 1895 for this protection, which was attacked as a gift of public money for unauthorized purposes. The Court held, however, that the Act of Congress was not void as a gift of public moneys for private uses, but was made in discharge of a moral obligation, and that the claimants had demands which the United States in "justice and honor" ought to pay. The Court very properly refused to consider whether the original bounty act was in violation of the Constitution; it rested its opinion upon the assumption that if it were, the government was morally bound to persons who acted on the belief that the law was valid.

Whether the sugar bounty was wholly unconstitutional, as was held by the Supreme Court of the District of Columbia, or whether it may not be within the power granted to Congress, and not reserved to the States or the people, to grant aid directly from the treasury of the United States, raised by taxation, for the purpose of stimulating particular industries which may be deemed of such importance that they should be aided by direct grants of the public moneys, the position of the Commission in the present case goes much further. It imposes a burden upon particular carriers for the benefit of a particular industry, in a particular section of the United States. The equality that necessarily prevails in taxation is set aside, and the carriers are required to contribute several million dollars annually to the deciduous fruit growers. There is no express power granted to Congress to enact legislation so drastic in its interference with property rights, or so subversive of fundamental principles of equality, and it cannot be sustained as incidental to the power to regulate commerce. As Justice Day says in his dissenting opinion in

Wilson v. New, 243 U. S. 332, 367,

> "The underlying principle of the decisions which have constrained this court in rare instances to exercise its constitutional right to declare congressional enactments void, is the protection intended to be afforded against legislation of an arbitrary character."

That the right to receive just compensation is a fundamental right of property has been frequently recognized.

In *Minnesota Rate Cases,* 230 U. S. 352, 433, the court said:

> "The property of the railroad corporation has been devoted to a public use. There is always the obligation springing from the nature of the business in which it is engaged—which private exigency may not be permitted to ignore—that these shall not be an exorbitant charge for the service rendered. But the State has not seen fit to undertake the service itself; and the private property embarked in it is not placed at the mercy of legislative caprice. It rests secure under the constitutional protection which extends not merely to the title but to right to receive just compensation for the service given to the public. * * *"

And in *Wilson v. New,* 243 U. S. 332, 386, Justice Pitney, in a dissenting opinion concurred in by Mr. Justice Van Devanter, says,

> "* * * The devotion of their (the carriers') property to the public use does not give to the public an interest in the property, but only in its use."

He points out further that the carrier's right of property is not "mere ownership and the privilege of receiving a limited return from its use," but there

are other rights involved, such as "the right to put it at risk in business, and by legitimate skill and enterprise to make gains beyond the fixed rates of interest."

Even if the new rate were not confiscatory, it would be beyond the legislative power to reduce a rate solely for the purpose of stimulating weakened industries, or to subsidize them through the guise of regulating rates. The carriers in the present case are forbidden to earn a rate, not "inherently unreasonable" (203 Fed. 56, 57), to use the expression of Judge Mack, because a number of deciduous fruit growers, by reason of over-production of wine grapes, or for other causes, are in financial distress. The situation is not unlike that involved in *Loan Association v. Topeka,* supra, with the additional difficulty that the government is not using the taxing power for private uses, but "is employing its power to take the carrier's private earnings to benefit a special class of persons". Suppose that the question was as to the surplus "recaptured" in the *Dayton-Goose Creek case* for the benefit of the railroad. Would it be within the constitutional powers of Congress to direct that such surplus should be used to pay the cost of transportation on the lines of the Dayton-Goose Creek Railway Company of those who desired to be carried as passengers, but did not have the fare, or to devote it to any use, however meritorious, not connected with the regulation of commerce?

Under our constitutional system, the sovereign power does not extend to the taking of property law-

fully owned, or the lawful profits of property, from one person or group of persons for the advantage of other persons or groups. The imposition upon carriers of the burden of promoting the general welfare is unlike the operation of the post office or other governmental activity, carried on for the public where deficits may be made good from taxation or other revenues in the public treasury. Those ultimately pay who share the conveniences. Even the "common benefit" to the whole community may not be served "at the expense of a single class. The equal protection of the laws—the spirit of common justice—forbids that one class should by law be compelled to suffer loss in order that others may make gain." (Brewer, J., in *Reagan v. Farmers' Loan and Trust Company*, 154 U. S. 362, 410.)

4. The power to regulate commerce does not include the power to grant aid to industry.

It is a commonplace of constitutional law that production is not commerce, that the latter word has to deal with buying, selling or transporting goods, not with making, or growing or mining them.

In *United Mine Workers of America v. Coronado Coal Company*, 259 U. S. 344, 407, Mr. Chief Justice Taft said:

> "Coal mining is not interstate commerce, and and the power of Congress does not extend to its regulation as such,"

and in *Hammer v. Dagenhart*, 247 U. S. 251, 272, Justice Day said:

"* * * The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof."

See also

United States v. E. C. Knight Company, 156 U. S. 1, 12, 13, 34;

Kidd v. Pearson, 128 U. S. 1, 20-22;

Coe v. Errol, 116 U. S. 517, 525;

Veazie v. Moor, 14 How. 568, 574.

Neither mining nor manufacturing is interstate commerce, and "its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements and persists even though the business be conducted in close connection with interstate commerce."

Oliver Iron Milling Company v. Lord, 262 U. S. 172, 178 (per Van Devanter, J.).

See also

Crescent Cotton Oil Company v. Mississippi, 257 U. S. 129, 136;

Arkadelphia Co. v. St. Louis Southwestern Railway Company, 249 U. S. 134, 148-152;

McCluskey v. Marysville & Northern Railway Company, 243 U. S. 36;

Delaware, Lackawanna & Western Railroad Company v. Yurkonis, 238 U. S. 439, 444-445;

In *Heisler v. Thomas Colliery Company,* 260 U. S. 245, the exemption from state taxation was claimed for the anthracite coal mined in Pennsylvania, on the ground that the state tax was a burden on interstate commerce. Justice McKenna, in rejecting this contention, said:

> "The reach and consequences of the contention repel its acceptance. If the possibility, or, indeed, certainty of exportation of a product or article from a state determines it to be in interstate commerce before the commencement of its movement from the state, it would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries, it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other states, at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof', wool yet unshorn and coal yet unmined, because they are in varying percentages destined for and surely to be exported to states other than those of their production."

The "federal commercial control", which the court rejected in the *Heisler case,* the Commission has adopted in the present case. Reducing transportation rates on their products to encourage the business of the deciduous fruit growers at the expense of the

railroads has as little justification as granting an exemption from state taxation of such products under the commerce clause.

If it be said that the regulation of rates is an exercise of sovereign power, that the motive of Congress could not be inquired into, the answer is that the power, and, moreover, the court has annulled acts of Congress because they seek to attain a forbidden end through a permitted power.

Child Labor Tax Case, 259 U. S. 20;
Hill v. Wallace, 259 U. S. 44.

If the control of the operations involved in the processes of manufacture is beyond the power of Congress, under the grant in the commerce clause, it must equally follow that the granting of special privileges to certain industries or productive activities is equally outside the power to regulate commerce. To be sure, the legislative power may in the regulation of commerce fix rates for transportation that are just and reasonable; it may prevent discrimination; it may assume a control over transportation, the limits of which are not precisely fixed, but which permit it wide discretion. Where the roads are privately owned, the right of the carrier to his earnings and to the enjoyment of the advantages which he possesses cannot be wrested from him by a direction of the government that he should not continue to receive the existing rates for his service, not because they are

unreasonable, but because it is desirable to encourage certain industries by giving them lower rates.

Though it has been held that the grant of the power to regulate commerce may include the power to prohibit the transportation of harmful things, like lottery tickets, it has never been held that it authorizes the granting of what are in effect bounties to industries needing encouragement. Congress may, no doubt, build roads or canals.

California v. Central Pacific Railroad Co., 127 U. S. 1, 39;
Wilson v. Shaw, 204 U. S. 24, 33.

It may exert affirmative control over privately owned railroads to see that such railroads are equipped to perform, and do perform the requisite public service.

Dayton-Goose Creek Railway Company v. United States, 263 U. S. 456, 497.

But regulation of commerce must be confined to commerce itself; it cannot reach out to matters that are not commerce, though they may ultimately result in commerce. It is conceded, for example, that Congress may not "control the mere acquisition of stock in a state corporation engaged in interstate commerce".

Northern Securities Company v. United States, 193 U. S. 197, 334,

though it may declare "combinations in restraint of commerce" illegal.

Loewe v. Lawlor, 208 U. S. 274.

The regulation must have some immediate end dealing with commerce. The essential nature of our government forbids the invasion of the productive activities existing in the states.

License Tax cases, 5 Wall. 462, 471.

"The power to regulate commerce," says the court in *Adair v. United States,* 208 U. S. 161, 177, "is the power to prescribe rules by which such commerce must be governed". But in order that the rule may be justified under the grant in the commerce clause, there must be "a substantial connection between the object sought to be attained by the act and the means provided to accomplish that object".

"Any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the states, must have some real or substantial relation to or connection with the commerce regulated" (208 U. S., p. 178).

In that case, notwithstanding "that some of the relations of railroads with unions of railroad employees are closely enough connected with commerce to justify legislation by Congress" (208 U. S. 190), the Erdman Act forbidding, under penalties, a carrier engaged in interstate commerce from discharging an employee because of his membership in a labor union, was held to be beyond the power of Congress to enact.

If Congress under the power of regulation of interstate commerce should be held to have the power to aid depressed industries by granting rates that will encourage them, the states must have the same power with respect to intrastate commerce. The extent of the power would be limitless.

Though the "affirmative power of Congress in developing interstate commerce agencies is clear" (Taft, C. J. in *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy Railroad Company*, 257 U. S. at p. 590) and though "the authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on" (Hughes, J., in *The Minnesota Rate cases*, 230 U. S. at p. 399), it has never been supposed that its power extends to establishing a protective tariff or a system of bounties for "distressed industries", or to reach into the states for the purpose of encouraging business that thereby interstate commerce may perhaps ultimately be increased.

Analogous to the situation involved in the manufacture or preparation of the goods are the cases where goods are shipped from one state to another under a contract whereby the seller is to perform some acts regarding them, such, for example, as setting in place complicated machinery. At what point does commerce end, when the goods are delivered at the end of their transportation, or when they are placed in the final position for use? May, for example, the

state of destination regulate or interfere with the performance of a contract involving construction work?

York Manufacturing Company v. Colley, 247 U. S. 21; and

Kansas City Structural Steel Company v. Arkansas, 269 U. S. 148;

indicate the difficulties, and it is not necessary to enter into them in this connection. But the cases which hold the construction work to be interstate commerce, and those which hold it to be intrastate commerce agree that the regulation of interstate commerce does not extend to things that have wholly passed out of commerce, and into the permanent dominion of the State's sphere of sovereignty. There would be no boundary line, no twilight zone, if the view that the Commission took in the present case concerning the Hoch-Smith Resolution were to prevail that it authorized the encouragement of agriculture by the Commission fixing lower rates for transportation of the products of the farm, orchard and vineyard.

5. Where doubts as to constitutional power are raised by one construction of a statute, the Court should, if possible, construe it so as to avoid the constitutional question.

In view of the difficulties of sustaining the Hoch-Smith Resolution as a valid exercise of the powers granted to Congress, if it be construed as a positive mandate to the Commission in every rate case involv-

ing agricultural products, to reduce those rates, though not inherently unreasonable or unfair, to the lowest possible lawful rates, an interpretation that avoids those difficulties should be adopted. This has been done in many cases. Thus, in the case of *Texas v. Eastern Texas Railroad Company*, 258 U. S. 204, the question was whether under the Transportation Act of 1920, an order of the Interstate Commerce Commission provided for in that Act, sanctioning the abandonment of the operation of a railroad, should be interpreted as authorizing the entire abandonment of a railroad wholly intrastate in its operations. Mr. Justice Van Devanter at p. 217 of the opinion thus states the case:

> "If paragraphs 18, 19 and 20 be construed as authorizing the Commission to deal with the abandonment of such a road as to intrastate as well as interstate and foreign commerce, a serious question of their constitutional validity will be unavoidable. If they be given a more restricted construction, their validity will be undoubted. Of such a situation this court has said, 'where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.' *(United States v. Delaware and Hudson Company*, 213 U. S. 366, 407-408.)
>
> "Although found in the Transportation Act, these paragraphs are amendments of the Interstate Commerce Act and are so styled. They contain some broad language, but do not plainly or certainly show that they are intended to provide for the complete abandonment of a road like the

one we have described * * *. As a whole these acts show that what is intended is to regulate interstate and foreign commerce and to affect intrastate commerce only as that may be incidental to the effective regulation and protection of commerce of the other class. They contain many manifestations of a continuing purpose to refrain from any regulation of interstate commerce, save such as is involved in the rightful exertion of the power of congress over interstate and foreign commerce (*Minnesota Rate Case*, 230 U. S. 352, 418; *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563). And had there been a purpose here to depart from the accustomed path and to deal with intrastate commerce as such independently of any effect on interstate and foreign commerce, it is but reasonable to believe that that purpose would have been very plainly declared."

The language is very pertinent to the construction that should be given the Resolution.

In *Harriman v. Interstate Commerce Commission*, 211 U. S. 407, 422, the court expresses its duty not only "to construe the statute not merely so as to sustain its constitutionality but so as to avoid a succession of constitutional doubts, so far as candor permits" (per Holmes, J., at p. 422).

This is illustrated in many other cases:

The Abby Dodge, 223 U. S. 166, 175;

United States v. Delaware and Hudson Company, 213 U. S. 366, 407;

Knights Templars' & Masons' Life Indemnity Company v. Jarman, 187 U. S. 197, 205;

McCullough v. Virginia, 172 U. S. 102, 112;
United States v. Coombs, 12 Pet. 72, 76;
Employers' Liability Cases, 207 U. S. 463, 509-519.

The constitutional difficulties that are presented by the construction given to the Hoch-Smith Resolution by the Commission, require the application of this familiar principle.

Interpreted as a general mandate to undertake a complete investigation of the rate structure of the country, these difficulties are avoided. Interpreted as it has been in the present case, the Hoch-Smith Resolution is beyond the power of Congress to regulate commerce conferred by the constitution and results in an interference with private property that brings it within the prohibition of the Fifth Amendment.

G. The Commission misconstrued the Resolution in that it applied it in an isolated proceeding involving a rate on a particular commodity from a single state, while the Resolution is intended to be applied only in a general investigation into the general rate structure of the country.

The order of the Commission was made in a proceeding instituted after the Resolution became effective. By it, the shippers sought to set aside a single rate and to obtain a lower one for the particular class of commodities involved. The proceeding was initiated by a complaint of the shippers pursuant to Section 15 of the Interstate Commerce Act. Though various parties intervened, in each order permitting inter-

vention, the Commission expressly asserted the condition that the permission to intervene should not be construed to allow the Intervener to introduce evidence which would unduly broaden the issues raised in the complaint (R. 150-153).

Properly construed, the Hoch-Smith Resolution is not applicable to such a proceeding. With the exception of cases pending before the Commission at the time of the adoption of the Resolution, of which the Resolution makes particular mention, the Resolution is directed only to a proceeding initiated by the Commission pursuant to the mandate of the Resolution directing a general and comprehensive investigation of the rate structure of the country.

Not only is it clear from the language of the Resolution, but also from the title of the Resolution, its legislative history and its previous construction by the Commission, the administrative body charged with its enforcement, that the Resolution was intended to provide for a general examination of the rate structure and not to apply to proceedings initiated by complaint concerning a particular rate. Such an interpretation is consistent with the spirit and purpose of the Resolution; any other interpretation would do violence to the purpose of the Resolution and would aggravate the very evils against which it was directed.

1. The title of the Resolution.

The title of the Resolution is as follows:

> "Joint Resolution Directing the Interstate Commerce Commission to take action relative to

adjustments in the rate structure of common carriers subject to the Interstate Commerce Act, and the fixing of rates and charges."

The direction is to the Commission to take action, not to await complaints of shippers and others. It directs the Commission to take such action with reference to "the rate structure of common carriers", not with reference to particular rates. The very form, a Joint Resolution, indicates that Congress was issuing a direction to a subordinate agency of government, not that it was legislating concerning rights and duties.

The court has often resorted to the titles of laws in arriving at the intention of the legislative power.

United States v. Katz, 271 U. S. 354, 357;
Knowlton v. Moore, 178 U. S. 41, 65;
Church of the Holy Trinity v. United States, 143 U. S. 457, 462.

2. The language of the Resolution.

The first paragraph of the Resolution is merely a warning to the Commission that in the fixing of rates, it should consider the conditions prevailing in the industries involved to the end of encouraging the free movement of commodities. With this, which is nothing new in rate making, we need not be concerned. The second paragraph of the Resolution contains a direct order to the Commission to "make a thorough investigation of the rate structure of common carriers subject to the Interstate Commerce Act", to ascer-

tain whether undue burdens were thereby imposed or undue preferences thereby given "as between the various localities and parts of the country, the various classes of traffic, and the various classes and kinds of commodities", and to correct all such defects when found. The Commission is further directed that, in making any such change, it should give due regard to "the general and comparative levels in market value of the various classes and kinds of commodities over a reasonable period of years to a natural and proper development of the country as a whole, and to the maintenance of an adequate system of transportation". The Commission is further directed to make such changes from time to time as it might find appropriate *"on the record then made"* to place rates upon a "just and reasonable basis *with relation to other rates"*. The third paragraph is directed especially to agricultural commodities and the Commission is directed thereby to give its first attention to agricultural commodities and to make with the least practicable delay "such lawful changes in the rate structrue of the country as will promote the freedom of movement by common carriers of the products of agriculture * * * at the lowest possible lawful rates compatible with the maintenance of adequate transportation service".

These two paragraphs of the Resolution leave no doubt that it applied only to a general investigation of the country's rate structure, ordered to be undertaken by the Commission. That such an investigation was ordered is clear. It is equally clear that the

directions contained in the Resolution could be carried out only in a general investigation. How, except in such a proceeding, would it be possible to give due regard to the general and comparative levels in market value of the various classes and kinds of commodities over a reasonable period of years? In the present proceeding no attempt was made to comply with this provision of the Resolution, and such attempt would have been impossible of achievement. How, except in a general rate investigation, would it be possible to give due regard to the development of the country as a whole? No opportunity is presented in a proceeding involving a single rate to make a comprehensive survey of the general rate structure or the conditions prevailing in the various parts of the country, and no attempt was made to do so in the present proceeding. How, except in a general investigation could due regard be given to the maintenance of an adequate transportation service? In a proceeding concerning a single rate instituted by a complaint of shippers, no opportunity presents itself to accord to the railroads such readjustment of its other rates as might be required by a lowering of the rate on the commodity involved.

The instructions to the Commission contained in the third paragraph are susceptible of being complied with only in a general investigation. The third paragraph of the Resolution does not refer to any new policy in rate making; it directs not that changes shall be made in rates, but in the rate structure of the

country. The rate structure of the country is not involved in any proceeding save the general investigation ordered by the Resolution. The third paragraph directs that any changes made in the rate structure shall be compatible with the maintenance of adequate transportation service. Adequate transportation service requires that the whole rate structure of the country shall be so adjusted as to afford to the carriers adequate income, and such an adequate income can only be secured and protected after general investigation. In short, the third paragraph of the Resolution is only a direction to give prompt attention in the general investigation, to agriculture which was then suffering from depression.

3. The legislative history shows the same Congressional intention.

The report of the Committee of the House on Interstate and Foreign Commerce, and the speeches of Representative Hoch in support of the Resolution, made it clear that Congress was of the opinion that the general rate structure of the country was out of adjustment, a condition aggravated by various blanket increases and decreases which had taken place during and after the war period, and that various localities and classes of commodities were bearing an undue proportion of the rate burden of the country. Among other things this committee reported as follows:

> "This resolution is based upon the proposition that the present freight structure is out of ad-

justment, and that certain commodities, particularly agricultural products, are, in general, bearing an unfair proportion of the freight burden.

* * * * * * *

"The resolution does not propose that Congress enter upon the technical job of rate making, but directs the Interstate Commerce Commission to proceed upon the inquiry and to remove as far as possible the injustices and maladjustments that now exist."

(Report No. 735, House Committee on Interstate and Foreign Commerce, May 13, 1924.)

This report called attention to the maladjustment of the rate structure caused by varying conditions and flat horizontal increases in the freight rates and to the fact that "this improper distribution of the freight burden has borne particularly heavily on the products of the farm owing to the price deflation in those products".

Mr. Hoch, one of the authors of the Resolution stated (Cong. Rec., Vol. 65, Part 11, Page 11026):

"The gentleman said the statement was made by Mr. Hardie, director of traffic of the Interstate Commerce Commission, that this investigation might take as much as 10 years. If you will turn over a few pages of the hearing, the gentleman knows very well that he will find and you will find that Mr. Hardie said that in the final survey when you get down to the last detail of its application it might possibly be as much as 10 years, but he also said that under this general survey, in his judgment, you could get substantial results inside of two or three years; and,

obviously, before we can make the adjustments we have to make this investigation. * * *"

Mr. Hoch summarized the Resolution by stating:

"* * * The main part of this resolution is in paragraph I. Nobody contends that this can be done at once. * * * The second paragraph is an honest direction to the commission, calling attention to the agricultural depression and directing every possible relief, reasonable and lawful, at the earliest possible date."

The Committee of the House stated that the Resolution was based upon the desire for a general investigation, for equalization of the burden of the freight rates of the country, and for prompt attention to the rates on agricultural products. The author of the bill did not anticipate that any action under the Resolution would be taken by the Commission other than in a general investigation, but specifically stated that the adjustment could not be made until the general investigation directed by the Resolution had been undertaken and sufficient progress made therein to determine the relation of rates on agricultural products to the balance of the rate structure.

4. Restricted scope of previous investigations by Commission.

Under the Interstate Commerce Act as originally enacted the Commission had no power to initiate rates but its power was confined to passing upon the reasonableness and propriety of only such rates as were challenged by complaints filed with it.

Later the Commission was given the power to suspend tariffs filed by carriers proposing advances in rates and to initiate an inquiry into the reasonableness and propriety of the proposal. This early experience apparently had the effect of creating more or less a habit of mind in the Commission to deal with individual rates and relatively minor rate adjustments rather than with comprehensive reviews of entire rate structures, and this habit of mind continued after the power of the Commission was broadened by amendments to the Act permitting it to enter of its own motion into inquiries of the latter scope.

Prior to the enactment of the Hoch-Smith Resolution the Commission had never entered upon a rate investigation of nation-wide scope except in the single instance involving the general rate increases authorized by *Ex Parte 74, Increased Rates,* 1920, 58 I. C. C. 220. That proceeding was an emergency one and for the sole purpose of inquiring into the revenue needs of the carriers and providing the necessary general increases in rates to meet them. It did not involve an inquiry into the rates themselves or a consideration of the relative levels of rates in different sections of the country or on different commodities.

While it is true that the Commission had initiated several so-called general investigations, these were either confined to the rates on particular commodities or to particular territories, such as the *Midcontinent Oil Rates* (112 I. C. C. 421; 132 I. C. C. 103), *Western*

Cement Rates (69 I. C. C. 644), *Sugar Cases of 1922* (81 I. C. C. 448), *Rates to Southwestern Destinations* (95 I. C. C. 188) and *Southern Class Rate Investigation* (100 I. C. C. 513). Generally these investigations resulted merely from the consolidation of numerous individual cases before the Commission, or a consolidation of such pending cases and a broadening of the issues through an order of investigation accompanying their consolidation.

It is evident from the legislative history of the Resolution that it was this tendency of the Commission to deal with rates in a more or less piecemeal way that the Hoch-Smith Resolution was intended to correct. It gave no new powers to the Commission with respect to rates and prescribed no new rules of law, but merely directed the Commission as to the manner in which it should proceed to the exercise of power already possessed by it under the law already in effect.

5. The Commission construed the Resolution as a mandate for a general survey.

On March 12, 1925, the Commission issued a General Order instituting an investigation of the rate structure of common carriers subject to the Interstate Commerce Act. This proceeding is known as Docket No. 17000. To use the words of the Commission,

> "Briefly summarized, the purpose of this investigation is to comply with the joint resolution

> in order to determine the extent and manner in which the rate structure of common carriers subject to the interstate commerce act is in any respect unlawful, and to make in accordance with law such changes, adjustments, and redistribution in that rate structure as may be necessary to correct any defects found to exist." (R. 518)

Thereafter, in the course of the proceeding, carriers in the western district applied for increases in freight rates generally averaging five per cent. This application known as Ex Parte 87 was consolidated with Docket No. 17000, and, in passing upon the application, the Commission said:

> "Full information as to what the rates now are, and what would constitute reasonable rates, is necessary before action may be taken prescribing reasonable and non-prejudicial rates, in view of the terms of the resolution requiring us so to readjust rates as to bring about fair relations between particular sections, competing points, and traffic. * * * The earnings of carriers in the western district, as a whole, have not been such as to warrant us on the record as it stands to-day in making any general downward revision of rates on products of agriculture, or of other industries subject to depression. The record does, however, present much information which bears directly on the task imposed upon us by the resolution, and it is our purpose to attempt to obtain further information necessary to enable us to determine what, if any, readjustments should be made as between commodities or in furtherance of the rectification of the rate structure as between particular points and districts. Our conclusions are without prejudice to the determination of the

issues in No. 17,000 and No. 15,686 upon the consolidated record."

Revenues in Western District, 113 I. C. C. 3, 39.

The Commission thus clearly recognized that its action under the Resolution could be only by a general proceeding.

It is significant that in its order in the earlier proceeding finding these rates not unreasonable, and dismissing the complaint, the Commission concluded (R. 317):

> "We find that the rates assailed as a whole are not unreasonable or unduly prejudicial as alleged. This finding is without prejudice to any conclusion which may be reached upon the later and more comprehensive record concerning the relation of railroad rates to agriculture which is expected to be developed in Docket No. 17000."

The earlier case was pending at the time the Resolution became effective, and under the provision of the Resolution, was to be determined by its terms. Having found the rate reasonable, the Commission specifically preserved the right to consider the rates in connection with the General Rate Investigation (Docket No. 17000) which had already been instituted pursuant to the mandate of the Resolution.

6. Application of the Resolution in a proceeding involving an isolated rate will defeat the intention of Congress.

The evil which is sought to be corrected is the supposed mal-adjustment among rates now existing. If it is open to any shipper (in the absence of a showing that it is unreasonable under Section 1 of the Interstate Commerce Act) to secure a reduction of his rate, irrespective of its effect upon other rates, and without an inquiry and investigation by the Commission as to what that result will be, the Resolution will be used to perpetuate and increase the evil which it sought to correct.

Immediately following the making of the order in this case, the grape growers of New York filed a complaint with the Commission asking for a reduction in their rates, alleging, among other grounds, undue preference to California, a depression in their industry by reason of the very rate reduction which is the subject of this inquiry and, after the hearing, the Commssion reduced the rate, basing its order, in part, upon the fact that the reduced rates from California constituted a discrimination.

> *Chautauqua & Erie Grape Growers' Cooperative Association v. Erie Railroad Company,* 146 I. C. C. 403.

The vicious circle created by making rates dependent upon any fact other than their reasonableness, illustrated by the last mentioned ruling, the *Lake Cargo Coal case,* supra, and *Georgia Peach Growers v. Alabama Ry.,* 139 I. C. C. 143, will continue, if the

Resolution is to be applied in separate proceedings. The change in conditions produced by the initial rate change, will result in mal-adjustments calling for further rate proceedings, and the erection of a new rate structure will be carried out piece-meal—the very evil for the correction of which the Resolution was enacted. Revenues of the carriers will be depleted by rate reductions for depressed industries, in favor of the first to rush in to secure relief. Later applicants would be faced with the reduced revenues of the carriers, and reductions in rates that otherwise would have been made will be denied because of the requirement of the Resolution that adequate transportation facilities be maintained and because the revenues of the carriers are insufficient to justify further decreases.

In connection with the comprehensive and general survey of the rate structure directed by the Resolution there is no reason why the Commission may not make appropriate orders applicable to particular commodities from time to time, but every argument of reason and convenience is against making it available as the basis of a complaint filed by a single group of shippers to reduce a rate on a single commodity produced in a single state. Not only is reason and convenience against such a construction of the Resolution, but such a construction would violate the plain terms of the Resolution, particularly when read in the light of its congressional history.

II. The rate fixed is confiscatory and violates the Interstate Commerce Act and the Constitution. The Commission intended to fix a rate that would not yield a substantial return, and did, in fact, fix a rate which does not cover the carriers' costs or yield a substantial return.

The new rates fixed by the Commission are confiscatory. They not only do not yield the carrier a substantial return over all proper costs, but such costs will actually exceed revenues by not less than $2.99 per car. If this contention is proved, the order is, of course, void, for the Commission and Congress are without power to deprive the carriers of their property by fixing confiscatory rates.

The question of confiscation is separate and independent of the issues already discussed. Those issues have to do with the question as to whether the Commission properly interpreted and applied the Resolution and the Act. The question of confiscation, on the other hand, arises under the Constitution itself and requires the independent judgment of this Court upon the questions of law and fact in issue. The order of the Commission is not conclusive upon this Court upon this question, even though it were supported by substantial evidence. While the rates fixed by the Commission are *prima facie* reasonable, this Court will, itself, examine the facts and the law, and, on its own independent judgment, decide whether the rate fixed is or is not confiscatory.

Ohio Valley Water Company v. Ben Avon Borough, 253 U. S. 287;

Prentis v. Atlantic Coast Line Company, 211 U. S. 210.

The petition alleges that the carriers' costs will amount on the average to not less than $470.06 for each car of deciduous fruit transported, while the average revenue under the new rate per car will not exceed $467.07, thus leaving a deficit of not less than $2.99 per car (R. 9). The new rates, it is alleged, will entail an actual loss to the carriers of more than $240,000 per annum, and will not allow for any profit (R. 9). In its answer, the Intervener denies that the average cost is $470.06 per car as alleged by the carrier, and alleges that the average revenue will be $480 per car (R. 89). Issues of fact, both as to revenue and as to cost, are thus raised which must be judicially reviewed. It is submitted that the uncontradicted evidence before the Commission shows that the rate is confiscatory, and that the findings of the Commission in its report sustain the carriers' contention.

1. A rate is confiscatory unless it allows the Carrier a substantial profit.

The Commission, in interpreting the requirement of the Hoch-Smith Resolution that the rates fixed shall be "lawful", stated that a "lawful" rate was one which "in principle" must be high enough to cover all the costs that may fairly be allocated to the service, plus at least some margin of profit (R. 26). From this interpretation, as well as an examination of the report as a whole, it is evident that the Commission considered a rate lawful, and not confiscatory, if it produced "slightly above the operating expenses" (R. 67).

This construction is erroneous. Rates which produce revenue only slightly in excess of the operating expenses are confiscatory and void.

The carriers are entitled to rates which will yield them their costs of service and substantial compensation in addition.

> "The state is without power to require the traffic covered by the fare enjoined to be carried at a loss or without substantial compensation over its proper costs."
>
> *Banton v. Belt Line Railway Corp.*, 268 U. S. 413.

In *Norfolk and Western Railway Company v. West Virginia*, 236 U. S. 605, Mr. Justice Hughes, in an opinion holding a passenger rate of 2¢ per mile fixed by an act of the West Virginia Legislature to be void, said:

> "It is apparent, from every point of view that this record permits, that the statutory rate at most affords a very narrow margin over the cost of the traffic. It is manifestly not a case where substantial compensation is permitted and where we are asked to enter the domain of the legislative discretion; nor is it one in which it is necessary to determine the value of the property employed in intrastafe business."

The view at one time urged, that if a rate returned the carrier the out-of-pocket operating expenses, incident to the particular traffic, it was not confiscatory, if the carrier earned a reasonable return upon its

property as a whole, has been definitely overruled. It is well settled that each rate must yield not only the out-of-pocket costs incurred by the particular traffic, but a just proportion of the expenses incurred for all traffic of which it forms a part, and in addition yield a substantial profit.

As was said in the *Banton case* (*Banton v. Belt Line Railway Corp.*, 268 U. S. 413), the cost of service

> "includes not only the expenditures, if any, incurred exclusively for that traffic, but also a just proportion of the expenses incurred for all traffic of which that in question forms a part."

In *Northern Pacific Railway Company v. North Dakota*, 236 U. S. 585, 597, the correct rule is stated by Mr. Justice Hughes to be:

> "The outlays that exclusively pertain to a given class of traffic must be assigned to that class, and the other expenses must be fairly apportioned."

To escape being confiscatory, therefore, a rate must pay all direct costs, a reasonable apportionment of all general costs, and in addition a substantial profit.

While it is indisputable that a carrier is entitled to earn a substantial return on each rate in excess of all proper costs, the carrier is not entitled to earn exactly the same percentage of return on all the various classes of traffic. The "substantial return" for one

class may be less in proportion than the "substantial return" required on another class of traffic. Depending upon various considerations, such as the value of the service to the shipper, the value of the product carried, and other factors, the rate of return on one class of traffic may be less or greater than on others, provided always that the rate yields to the carrier a substantial return in excess of all proper costs.

But a rate may not be reduced below the point where it will return a substantial profit, even though the State or a regulatory body may consider it sound public policy to do so. In the case of *Northern Pacific v. North Dakota,* supra, where a rate was held to be confiscatory and void, Mr. Justice Hughes, speaking for the court, said (p. 598):

> "The state insists that the enactment of the statute may be justified as 'a declaration of public policy'. In substance, the argument is that the rate was imposed to aid in the development of a local industry and thus to confer a benefit upon the people of the State * * *. But, while local interests serve as a motive for enforcing reasonable rates, it would be a very different matter to say that the State may compel the carrier to maintain a rate upon a particular commodity that is less than reasonable, or—as might equally well be asserted—to carry gratuitously, in order to build up a local enterprise. * * * It does not aid the argument to urge that the State may permit the carrier to make good its loss by charges for other transportation. * * * Certainly, it could not be said that the carrier may be required to

charge excessive rates to some in order that others might be served at a rate unreasonably low. That would be but arbitrary action. We cannot reach the conclusion that the rate in question is to be supported upon the ground of public policy if, upon the facts found, it should be deemed to be less than reasonable."

These principles, applied to the instant case, require that the rates for agricultural products, including deciduous fruits, must be reasonable rates and must return a substantial profit. The fact that the agricultural industry may be suffering from depression, or that Congress may consider as a matter of public policy that the rates on agricultural products should be reduced, does not authorize a reduction to a point where the rates fail to yield a substantial return over all proper costs of the particular traffic. It cannot because of public policy, fix a "slightly remunerative" rate, or one yielding "slightly in excess of operating expenses", on the theory that the loss of profit to the carrier may be made up in higher rates on the products of the forest, or of the mine. The losses caused by a rate yielding less than a fair return may not be shifted over to other industries to increase their rates beyond what is reasonable.

2. Scope of examination by this Court.

The findings of the Commission that the new rates are non-confiscatory is not binding on the court. The court is under the duty itself to examine the facts

and the law and on its independent judgment decide whether the rate fixed is or is not a legal one.

Ohio Valley Water Company v. Ben Avon Borough, 253 U. S. 287;
Prentis v. Atlantic Coast Line Company, 211 U. S. 210.

The court is called upon by these decisions to examine independently the evidence introduced before the Commission and to make its judgment upon those facts, in exactly the same way that a court of equity passes upon facts presented to it in an ordinary suit. It must find in accordance with the weight of the evidence. In this case the task is not difficult, since the report of the Commission shows not only that the rate is confiscatory, but also the misinterpretation of the law and the error in computation by the Commission which caused the fixing of the confiscatory rate.

3. The evidence of confiscation.

The petition alleges that the rates are confiscatory, and in support of this allegation sets forth the following (R. 11):

The average revenue per car under the new rates, using the highest rates prescribed in the order, and allowing for the increased minimum weight on grapes permitted thereby, will not exceed..	$467.07
The total average operating expenses and taxes per car (with-	

out allowing any profit) will not be less than	470.06	
The loss per car (without allowing any profit) will be not less than	2.99	per car
On the basis of an annual movement of approximately 80,000 cars, the actual loss (without allowing any profit) will be not less than	240,000.00	per year
The loss in revenue resulting from the new rates will be not less than	2,700,000.00	per year

The petition also shows by appropriate allegation what the cost of not less than $470.06 represents (R. 9). It represents an average operating expense per car, exclusive of taxes and rental of joint facilities, of not less than $433.68.

It represents taxes, amounting to 8.39% of $433.68, or ..... 36.38.

(This percentage of tax is derived from Exhibit 204 (R. 458) and represents the ratio which taxes bore to operating expenses for the year 1926 for all the railroads in the western district, including the Illinois Central and five principal railroads in the eastern district.)

Or total costs in excess of ..... $470.06.

These specific allegations are supported by the uncontradicted evidence presented to the Commission.

It is unusual in a rate proceeding involving an interstate rate, that it is possible for the carriers to produce cost records which reflect with reasonable certainty and exactness the actual costs. In this case, however, such a cost study was presented and was accepted by the Commission in its original report as being prepared upon a proper basis. The Commission even went further. It stated (R. 58) that due weight was given to the cost study presented by the carriers. But in making its computations in the original report the Commission made the error of $20.79 per car in computing the costs of the carriers. After the carriers had pointed this out in their petition for rehearing, the Commission, in its Report on Further Consideration, was forced to admit its error (R. 67). Then, and then only, did the Commission attempt to cast doubt upon the carriers' cost study. A reading of the report and a checking of the evidence will show that the Commission utilized the carriers' cost study in arriving at the reduced rate, and that in so doing the Commission made the error of $20.79 per car in its computation as to costs. The criticisms by the Commission of the carriers' cost study made for the first time in the Report on Further Consideration, are not justified by any evidence and are entitled to little consideration by this court. They are obviously made for the purpose of escaping the conclusion which inevitably follows the error of computation made in the original report. For this inevitable conclusion that the rates are con-

fiscatory results from the fact that the "lowest possible lawful rates", originally fixed by the Commission rested upon an error of $20.79 against the carriers; they cannot continue to be the "lowest possible lawful rates" after the error is discovered; they must necessarily now be lower than the lowest possible lawful rates.

4. The revenues to be expected under the new rates.

The Intervener, California Growers' & Shippers' Protective League, filed a verified answer alleging that the average revenue per car under the new rates will be $480 per annum, instead of the $467.07 alleged by the carriers. The Intervener alleges (R. 89) "that said new rates will produce an average revenue, using the highest rates prescribed in the said order and allowing for the increased minimum weight on grapes permitted thereby, to the carriers approximating $480 per car", and again the Intervener alleges (R. 95) "that the evidence adduced before the Commission shows * * * the authorized increase in the carload minimum weight applicable to shipments of grapes from 26,000 pounds to 30,000 pounds will be followed by an increase in the average load of grapes in an amount somewhat in excess of 30,000 pounds per car, and that such increase in the loading will necessarily substantially increase the average revenue per car."

In the first place it is impossible that the new rate, even with an increase in the average load of grapes to an amount in excess of 30,000 pounds per car, will

"necessarily substantially increase the average revenue per car". Intervener forgets that the rates have been reduced. The present average revenue per car is $429.42 as found by the Commission (R. 31). The highest revenue that Intervener even dares to allege is $480.00, a decrease of $9.42 in average revenue per car, instead of the "substantial increase" which Intervener alleges must necessarily follow.

In the second place, while the decreased rates apply to all deciduous fruit traffic,—the increased minimum in car loading applies only to grapes (R. 59).

The question as to what the revenue under the new rates will be, is one of fact to be decided by this court. But it is illuminating to see what the Commission thought on the question of what the average loading would be under the new minimum, in view of the Intervener's allegation.

In its report the Commission says (R. 39):

> "Complainant contends that there has been an increase in the average loading per car, but excluding abnormal years, the loading figures have not changed materially in recent years. * * * Complainant predicts that with an increase in the minimum on grapes to 30,000 pounds, the resultant average load of all deciduous fruits will be increased to something approximating that figure. Whether that result will follow is questionable. It would be necessary that the average loading of grapes be increased to 31,140 pounds to bring the average loading of all deciduous fruits to 30,000 pounds. If the average loading of all fruits remained the same and grapes were loaded

to the minimum, the average load would become 29,192 pounds."

From this it is a fair inference that,

(1) The Commission considers it questionable (and therefore improbable) that the average load will increase to 30,000 pounds and this is the figure that must be used to arrive at the revenue of $480 per car, which intervener alleges will result.

(2) That the Commission considered 29,192 pounds the proper estimated average load under the new rate. This is the figure petitioners have used to compute the anticipated income and represents an increase of 886 pounds over the present average load per car.

For the purpose of computing the anticipated revenue under the new rates, it is submitted that the basis mentioned by the Commission and used by the carriers, is reasonable and proper.

5. Even using the erroneous figures of Intervener, the new rate is confiscatory.

The Intervener claims a gross revenue of $10.00 per car in excess of the revenues stated in the complaint herein. If its figures were correct (which they are not), the carriers would receive at the maximum $10 per car in excess of their costs. $10 over costs of $470 per car. Even this would not represent profit,

for the reason that rentals would still have to be deducted.

But, assuming that the carriers will receive a profit of $10 per car under the new rate, the profit represents that earned by the carriers for transporting a carload of fruit, of an approximate net weight of 15 tons, 2970 miles (R. 20) eastward across the continent and for returning 2400 miles with the empty car (R. 45), as well as for the further incidental service connected with assembling, re-routing and delivery of freight, the furnishing of expedited service, and the use of expensive and unusual equipment. The average time required in this haul is approximately thirty days. The cost of such a car is $3194. A six per cent return upon the refrigerator car alone for this period of time would be over $15.00. The return of $10.00 is less than 4% on the value of the car while in use, without any return on the roadbed, locomotives or other facilities used in transportation, and even without any allowance for the idle time of the car itself. It is not a substantial profit, but a negligible one and is made so low as to be in violation of the constitutional rights of the carriers.

Even if the average revenue under the new rates were the same as that under the old rates ($489.40 per car) the profit over operating costs would be barely sufficient to pay interest on the value of the car while in use on one trip, and still allows nothing to the carrier for the use of their other facilities.

A more substantial return than this was held to be confiscatory in *Norfolk & Western Railway Company v. West Virginia*, 236 U. S. 605.

6. The Carriers' costs.

What does the record before the Commission show as to the carriers' costs? Figures and statistics were introduced by the carriers to show what the costs of the service actually were.

The most comprehensive of these cost studies consisted of a detailed analysis of the actual operating expenses of the Santa Fe Railroad in the year 1923, covering a typical movement. The Commission comments upon this showing as follows (R. 54):

> "No details are given in the cost study so that a check can be made as to the mechanical or clerical accuracy of the result. The methods employed in reaching the result seem to be satisfactory."

The Commission then discusses the manner in which the various items of expense, such as fuel, wages, switching expense, locomotive repairs, etc., were computed and allocated and states (R. 54):

> "Other items were reasonably apportioned to the grape trains."

The carriers' theory was that by ascertaining the costs per car mile for the movement over the Santa Fe, the costs for the average haul of all deciduous fruits could be very closely approximated by applying

the same costs to the haul on other railroads. Testimony was introduced to show that the costs for the average haul of all deciduous fruits could be very closely approximated by applying the same costs to the haul on other railroads. Testimony was introduced (R. 482) to show that the haul over the single line of the Santa Fe was probably performed at less cost than the hauls over any of the other routes comprising in each case two or more independent lines. This assumption and theory of the carriers were not in any way criticized by the Commission in its original report and this basis is recognized as proper in other decisions of the Commission. One of the steps necessary in computing the cost per mile was to estimate and apply the ratio of empty car to loaded car miles, since in the transportation of deciduous fruits, the empty car haul was very greatly in excess of the average empty car haul for other classes of traffic. The carriers' figures showed that the ratio of westbound empty car mileage to total westbound mileage used was 81.5% (R. 478), and that the percentage of total empty to total loaded car mileage both eastbound and westbound was 67.58%.

The Commission based the new rates upon an allowance for empty car miles bearing a ratio to loaded car miles of 67.58% (R. 54). The Commission in this manner arrived at a cost of the carriers of $414.02 per car without taxes, rental of equipment or joint facilities (R. 55). After the order was made the carriers filed with the Commission a petition for recon-

sideration. One of the grounds urged was that the Commission in fixing the indicated costs at $414.02 a car, exclusive of taxes, had erroneously used 67.58% as the ratio of empty car to loaded car miles, when the proper ratio was 81.5% and that this error caused an under valuing of the costs amounting to $20.79 per car.

In its Report on Further Consideration the Commission admits that its action in substituting the lower percentage was erroneous, stating (R. 66):

> "In their petition defendants question the propriety of the substitution of the figure of 67.58 for 81.5 as the ratio of empty-car to loaded-car mileage. It is true that this suggestion of a reduction of the allowance for the return of empty cars was unwarranted. The two figures are not comparable. The higher figure is the ratio of the westbound empty-car mileage to the total westbound mileage. The substituted figure represents the ratio of total empty-car mileage both eastbound and westbound to the total loaded-car mileage in both directions."

After admitting that it had made an error in the costs amounting to $20.79 per car, the Commission proceeded (R. 67):

> "The carriers state that the effect of the erroneous substitution amounted to $20.79 per car, and that if we had merely changed the percentage of empty car mileage on the Santa Fe, 68.78 to 67.58, the percentage for all the lines engaged in this traffic, the $414.02 found in the opinion would have become $433.68 per car. This may be compared with revenue, at existing rates of $489.59.

> The difference, $55.91, would be available for taxes, rental of equipment or joint facilities, and interest and this difference would not be eliminated by the prescribed reductions, especially if we assume that the increased minimum load would make some increase in the average revenue per car. In other words, even if the cost study were accepted without question, it would indicate that the prescribed rates are slightly above operating expenses, and would confirm the impression obtained from comparisons with other rates that the new rates while probably of less than average profitableness, would still leave the traffic attractive to the carriers."

It also finds (R. 68):

> "On the whole record, we adhere to our former finding that the present rates are unreasonable and we are not convinced that the rates prescribed are below what are necessary to afford complainants the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

When the Commission made its original order it was under the belief that the costs as developed by the carriers' evidence and which it took into consideration, were $20.79 per car less than they actually proved to be. Notwithstanding its recognition of this error of $20.79 per car in estimating the costs, the Commission adhered to its former decision. How the lowest possible lawful rate fixed at the time the order was originally made, and based on the erroneous estimate of costs by the Commission, can still remain the lowest possible lawful rate when it is proved and

admitted that the actual costs are $20.79 per car higher than they were thought to be when the order was originally made, is something of a mystery. The most that the Commission is willing to say in its Report on Further Consideration (R. 67) is that the difference available

> "for taxes, rental of equipment or joint facilities, and interest would not be eliminated by the prescribed reductions, especially if we assume that the increased minimum load would make some increase in the average revenue per car."

And also that (R. 67):

> "* * * even if the cost study were accepted without question, it would indicate that the prescribed rates are slightly above the operating expenses and would confirm the impression obtained from comparisons with other rates that the new rates, while probably of less than average profitableness, would still leave the traffic attractive to the carriers."

The fact that the difference between operating expense and revenue under the present rates would not be eliminated by the prescribed reductions, is not a finding that the rates are lawful or non-confiscatory. A finding that the prescribed rates are slightly above "operating expenses" is in effect a finding that the rates are confiscatory. The term "operating expenses" as is indicated by the context, does not include taxes or rentals. A rate slightly above operating expenses certainly is not a compensatory rate.

It may be urged that the Commission did not fix the new rates on the basis of the cost study of the carriers. However, it cannot be denied that it took the figures into consideration for it said in its original report (R. 58):

> "Considering the relative rates on and earnings of the deciduous-fruit traffic in the light of the condition of the industry and of the service performed by the carriers and giving due weight to the cost study presented by defendants, we are of the view that the present rates are in excess of the lowest possible lawful rates as herein defined."

When it found that it had made an error of $20.79 per car, the Commission, in an endeavor to escape the inevitable conclusion that the rate fixed by it was in error to the same extent, said (R. 68): "While consideration was given to the cost study submitted by defendants, it was not a controlling factor in our decision". Whether it was the controlling factor or not, it was admittedly taken into consideration in arriving at the new rate. Without the use of the study the Commission had no evidence before it upon which to base its finding that the new rates are the "lowest possible lawful rates compatible with the maintenance of adequate transportation service."

In its Report on Further Consideration, the Commission, forced to admit its error in computation, attempted to discredit the carriers' cost study. In its original report, it had specifically approved the "methods employed in reaching the results" (R. 54).

The Commission, in its Report on Further Consideration, states (R. 67) that no details were given and consequently no check could be made as to the mechanical or clerical accuracy of the cost study. The record shows that the cost study was presented by a witness who was subjected to cross-examination (R. 483). If there was any doubt about the accuracy of the computations, it was the duty of the Commission and of the complainant to demonstrate that fact when the testimony was being introduced. Under the law (Sec. 20 (5) Interstate Commerce Act) the Commission has ample power to investigate the carriers' accounts, and thus to develop any errors that might exist in their cost study.

The Commission states that "while consideration was given to the cost study submitted by defendants, it was not a controlling factor in our decision. Numerous other pertinent matters of record were given proper weight" (R. 68). The carriers' cost study was the only direct and persuasive evidence as to costs and afforded the best possible evidence and in fact the only substantial evidence as to what was a lawful rate. The rate comparisons introduced by the complainant, the inadequacy of which has already been commented upon, have no evidentiary value to determine what is the lowest possible lawful rate compatible with the maintenance of adequate transportation.

As this court is called upon to render an independent judgment on the facts and the law as to confisca-

tion, it will be called upon to examine the record, including the carriers' cost study and the complainant's rate comparisons and decide whether the rate fixed by the Commission is supported by a preponderance of the evidence.

An interesting case upon the value of evidence as bearing on the issue of confiscation is *Northern Pacific Railway Company v. Department of Public Works of the State of Washington,* 268 U. S. 39, 43. Here the Department of Public Works of Washington established a rate on saw logs in carload lots. In a court proceeding to annul the decree the two principal carriers "presented evidence tending to show * * * that the rates did not defray fully the operating cost of the traffic and its proportion of the taxes payable". In discussing this case, Mr. Justice Brandeis said in commenting upon the cost data:

> "This evidence was in character persuasive. It was fairly specific, direct, and comprehensive. If the facts warranted, the shippers and the public officials might, of course, have shown by evidence of similar character that the carriers' evidence was inherently untrustworthy; or it might have been overcome by more persuasive evidence to the contrary. Little attempt was made to show that any testimony introduced by the carriers was inherently untrustworthy. Little conflict with the evidence of the carriers was developed by the evidence as to specific facts introduced for the shippers and the public. Apparently necessary inferences from specific facts established by the carriers were not explained away. The Department's findings concerning operating costs

rested largely upon deductions from data found in published reports of the carriers and in their exhibits filed in this case. Instead of attempting to show by evidence, reasonably specific and direct, what the actual operating cost of this traffic was to the several carriers, the Department created a composite figure representing the weighted average operating cost per 1,000 gross ton miles of all revenue freight carried on the four systems, and made that figure a basis for estimating the operating cost of the log traffic in Washington. This was clearly erroneous."

The same comment might be made on the evidence in this case. The cost evidence introduced by the carriers was in character persuasive. It was fairly specific and direct and comprehensive. If the facts warranted, the shippers and public officials might have shown by evidence of similar character that the carriers' evidence was inherently untrustworthy, or it might have been overcome by more persuasive evidence to the contrary.

From the face of the report of the Commission, it appears:

(a) That the methods employed in determining the carriers' costs were proper;

(b) That the Commission made an error of $20.79 per car in estimating the costs of the carriers, and that it had this erroneous figure before it when it fixed the new rate;

(c) That it is of the opinion that the new rates "are slightly above operating expenses";

(d) That in the opinion of the Commission the new rates "while probably of less than average profitableness, would still leave the traffic attractive to the carriers."

It is submitted that the report of the Commission and the record show conclusively that the rate fixed is confiscatory, and that it fixed a rate based upon an error in computation necessarily making the new rate at least $20.79 lower than it should have been had the Commission not made its error.

SUMMARY.

To recapitulate the contention of the carriers, it is believed that the following positions have been demonstrated:

1. That the Interstate Commerce Commission, in fixing the rate in question, relied upon a supposed mandate to lower existing rates on agricultural products believed to be contained in the Hoch-Smith Resolution.

This fact appears from the face of the Commission's Reports and Orders. It is established:

(a) by the evidence on which the Commission relied in drawing its conclusions;

(b) by the history of the proceeding itself, involving a reversal of a position taken by the

Commission only a few months before the present proceeding was instituted;

(c) by the Commission's definition of the issue in the case,—whether the rate assailed "approaches the lowest limit or level of the zone of reasonableness";

(d) by the concurring and dissenting opinions;

(e) by the emphasis laid upon the depressed condition of the deciduous fruit interests;

(f) by the Report and Order on Further Consideration, which finds that the Commission was "not convinced that the rates prescribed are below * * * the lowest possible lawful rates compatible with the maintenance of an adequate transportation service";

2. That even though the order "may have been couched in a form which would cause it, superficially considered" (219 U. S. at p. 443), to appear to involve the determination of the unreasonableness of an existing rate, and the reasonableness of the new rate, in fact it was an order fixing the lowest possible rate conceived to be demanded by the Joint Resolution of Congress referred to.

3. That the Hoch-Smith Resolution was improperly construed by the Commission as requiring it to seek the lowest limit at which a lawful rate could be fixed in a proceeding instituted by shippers for the purpose of having a particular rate reduced as unreasonable.

In fact, the Hoch-Smith Resolution was intended by Congress only as a direction to the Commission to examine the entire rate structure of the country with a view of readjusting rates as an entirety and was intended to have no application to proceedings before the Commission initiated by complaint.

This construction is borne out (a) by the form of the legislative declaration—a Joint Resolution; (b) by its title; (c) by its legislative history; (d) by the language of the Resolution; (e) by the administrative action of the Commission itself in initiating a general proceeding to investigate the entire rate structure; and (f) by former rulings of the Commission itself.

4. The result of construing the Resolution in the manner in which it was construed and of applying it to proceedings brought on complaint to reduce rates would be disastrous. The race for priorities would result in the most active competition in securing reductions of rates inherently reasonable, because of financial difficulties for which the rates are not shown to be responsible.

5. That the Commission in making the order complained of misconstrued the Hoch-Smith Resolution in other particulars than in respect to its applicability to the sort of proceeding here involved.

(a) It interpreted it as requiring an existing rate to be reduced though not inherently unreasonable;

(b) It interpreted the Resolution as justifying a reduction to a lower limit though the carriers were not making a fair return, and thus treated it in effect as repealing Section 15a of the Interstate Commerce Act;

(c) It misconstrued the expression "freedom of movement" by introducing into words that deal only with transportation matters a meaning involving economic and business problems wholly independent of transportation or the movement of goods;

(d) It viewed the Resolution as requiring it to reduce an established rate complained of, if the shippers showed they labored under financial distress, unless the carriers proved it to be the lowest possible lawful rate;

(e) It considered that its duty under Congressional mandate was to lower an established rate in favor of depressed agricultural interests upon "impressions" and "indications" merely;

(f) It yielded to an assumed command which does not exist in the Resolution to fix the rate at a point where the profit was only "slightly" above operating expenses, and that returned "some" profit, because it believed the lowest possible rate ought to be so fixed under the terms of the Resolution.

6. The construction given by the Commission to the Resolution raises grave question of its constitutionality. The Commission's construction implies that

the Resolution authorizes a subsidy to a depressed industry at the expense of carriers and at the expense of other shippers. These serious questions, involving the whole matter of a federal commercial policy may be avoided by construing the Resolution as requiring no other or different standard of rate fixing than the Interstate Commerce Act and the Transportation Act of 1920.

7. That the rate fixed is confiscatory, because it does not give the carrier a substantial return over costs properly allocated to the service, but only "some" return or a "slight profit".

8. That the rate was intentionally fixed below the point where there would be a substantial return, because the Commission regarded it as a duty imposed by the Resolution to reduce a rate not unreasonable under the tests adopted and applied in general in order to aid the deciduous fruit growers of California.

9. That the Commission after fixing the lowest possible lawful rate, as they conceived it, basing their action in large part upon a cost study, upon a rehearing and reconsideration left the rate so fixed undisturbed, though there was a conceded clerical error of more than $20 per car. In so doing, they necessarily fixed a rate lower than the lowest possible lawful rate.

10. That the finding of the Commission that the new rate is non-confiscatory is not binding on the

court since the carriers' petition raises the point and an issue was made on it before the lower court.

11. That the evidence before the Commission shows that the rate is confiscatory, and the fact may be determined by the Court from the Reports and Orders of the Commission.

CONCLUSION.

The present case is not one depending upon conflicting testimony or disputed questions of fact. The questions involved are simple and are legal rather than factual. Definite legal propositions are to be passed upon. The applicability of a Resolution made by Congress, the construction of that Resolution, the question of the duty of the Interstate Commerce Commission to apply the rules established by the Acts of Congress respecting transportation and commerce, the confiscatory character of the rate fixed under an erroneous reading of the order of the legislative department of the United States, present those "salient circumstances" which require the court to review the orders of the Commission mentioned by the court in *Illinois Central Ry. Co. v. Interstate Commerce Commission,* 206 U. S. at p. 455.

It is submitted that Congress by a mere Joint Resolution did not make, or intend to effect a fundamental and revolutionary change in rate making policy, or upset the principles and plan of railroad regu-

lation that had gradually and painfully developed over more than forty years of experience, trial and error, and which had culminated in the Transportation Act of 1920. Rather does it seem clear that the Resolution is a mere direction to the ministerial officers of the Government to enforce and carry out the provisions of the then existing law so as to give full force and effect to that complete and affirmative policy of regulation prescribed by the Interstate Commerce Act as it has developed through the successive amendments made thereto over a long period of time.

The judgment of the lower court should be reversed and the order made, and the rate established, by the Commission annulled.

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Receipt of a copy of the foregoing Statement is hereby acknowledged on this.....day of January, 1929.

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1929.

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Attorney General of the United States.

FILED
FEB 25 1929
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1928.

No. 473

THE ANN ARBOR RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.,
Appellants,

vs.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION AND THE CALIFORNIA GROWERS' & SHIPPERS' PROTECTIVE LEAGUE,
Appellees.

REPLY BRIEF OF APPELLANTS

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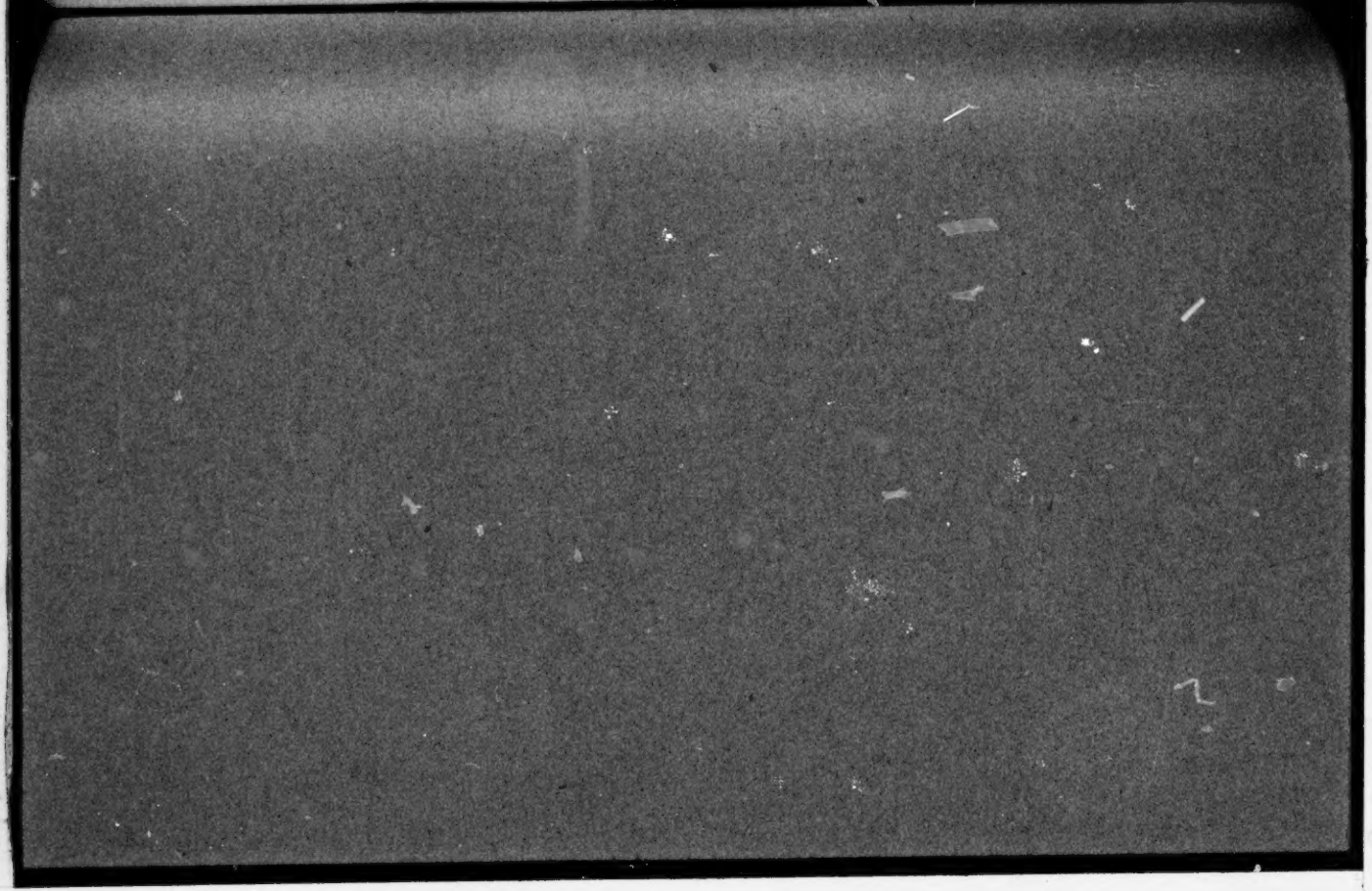

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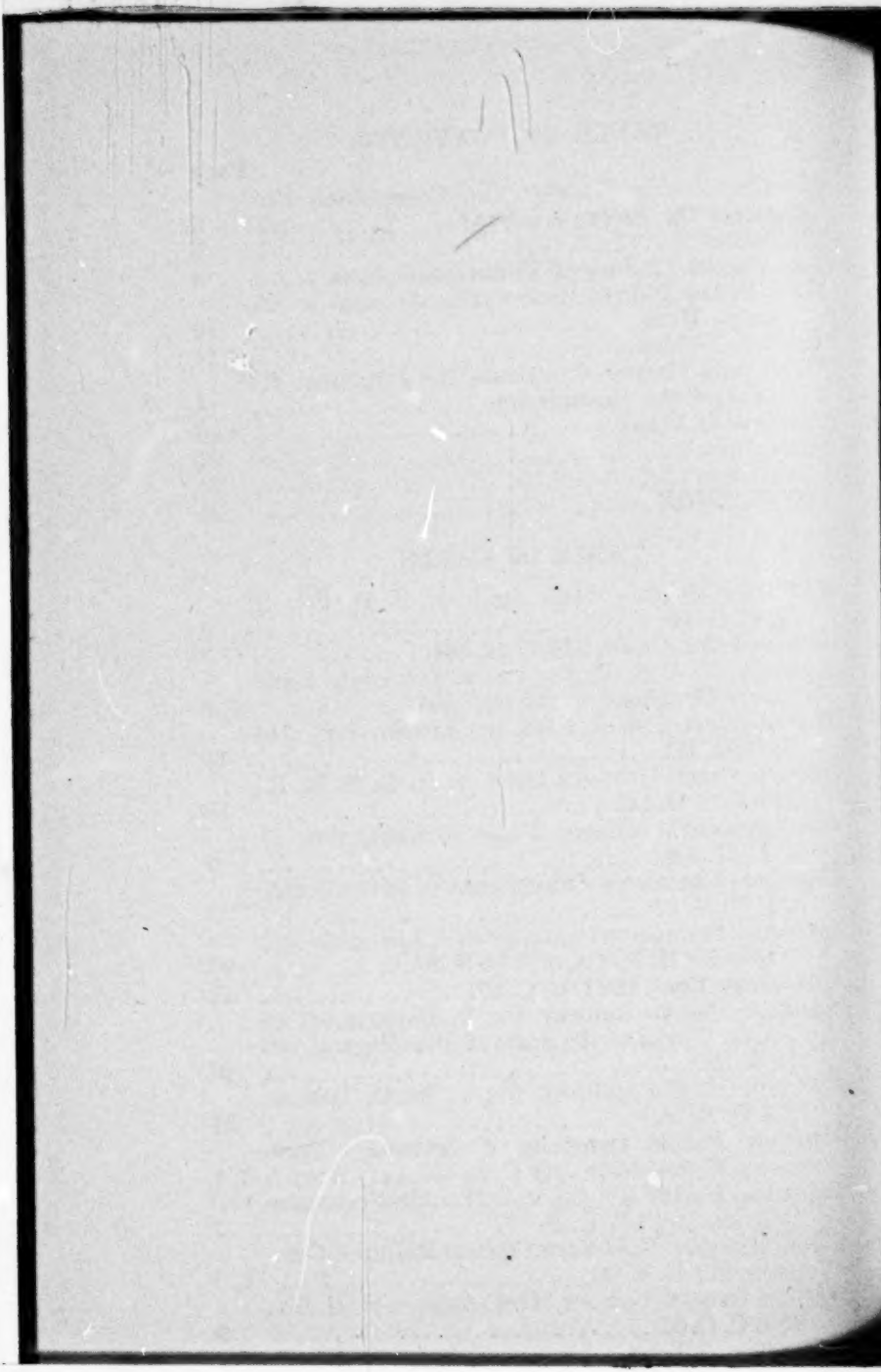

IN THE

Supreme Court of the United States

OCTOBER TERM 1928.

No. 273

THE ANN ARBOR RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.,
Appellants,

vs.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION AND THE CALIFORNIA GROWERS' & SHIPPERS' PROTECTIVE LEAGUE,
Appellees.

REPLY BRIEF OF APPELLANTS

The briefs filed herein on behalf of the Appellees present a studied effort to avoid the issues arising from the Commission's interpretation of and action under the Hoch-Smith Resolution. The Resolution after having been invoked by the complainant before the Commission, after having been constantly referred to by the Commission throughout its decision, is now cast aside, and this court is told that this was but a "conventional rate case." It is frankly conceded by counsel for the Intervener that if the Commission undertook to do under its supposed authority and in at-

tempted compliance with the mandate of the Resolution what we contend that it did do, that the Resolution and the action of the Commission would be in violation of the statutory and constitutional rights of the carriers. (Intervener's Brief, p. 23)

In view of this attitude of the parties it becomes necessary to determine exactly what the Commission did, not what it might have done. In the words of Chief Justice White in *Southern Pacific Company* v. *Interstate Commerce Commission*, 219 U. S. 433, at page 437:

> "When that which is superfluous is put out of view, it will come to pass that every substantial controversy which the case presents will be disposed of by determining what was the character of the order made by the Commission; that is to say, what was the power which that body exerted in making the order in question."

To determine that we ask only that the court read the report of the Commission (R. 16-65) and its Report on Further Consideration. (R. 65-69) A reading of these reports must lead inevitably to the conclusion that the action of the Commission is predicated wholly upon its view that in a rate proceeding involving an agricultural product a showing that a depression exists, without more, compels the Commission to reduce the existing rate to the "lowest possible lawful rate" as defined by the Commission irrespective of whether the existing rate is reasonable and lawful under Section 1; in short, that rates on agricultural products suffering from depression, irrespective of the cause of the depression, are to be made on a different and lower basis than are rates on other commodities not suffering from depression.

The Question is Whether the Commission Possesses the Power Asserted.

The fundamental question here presented does not turn on whether or not the Hoch-Smith Resolution changed existing law or whether the Commission considered that it already possessed the supposed power which it undertook to exercise. If by its order the Commission fixed rates on agricultural products on a different basis because the industry was suffering from depression, than it would have prescribed for the products of a prosperous industry, it undertook to regulate industry and not to regulate commerce and for the reasons pointed out in our brief (pp. 118-150) such action is invalid because beyond the power of Congress itself to exercise, and hence incapable of delegation to the Commission.

A long line of decisions establishes beyond doubt that the Interstate Commerce Act has given no power to the Commission to undertake to regulate industry, or base its decisions on other than transportation considerations.

Texas and Pacific Ry. Co. v. Interstate Commerce Commission, 162 U. S. 197,
Southern Pacific Company v. Interstate Commerce Commission, 219 U. S. 433,
Interstate Commerce Commission v. Diffenbaugh, 222 U. S. 42,
United States v. New York Central Railroad Company, 263 U. S. 603,
Assigned Car Cases, 274 U. S. 564,
Atchison, T. & S. F. Ry. Co. v. Interstate Commerce Commission, 190 Fed. 591.

The Report of the Commission treated the question as if a new duty had been imposed upon it by the Reso-

lution or at least that it had been directed to act in a particular way, where previously it had been free to exercise its discretion. Its previous action in finding these very rates not unreasonable is persuasive that it thought itself obligated to prescribe a different rate by virtue of the Resolution than without it.

However that may be, the question to be determined is "what was the power which that body exerted in making the order in question." If it be the power to fix rates on one commodity on any different basis than it applies to all commodities, and if such power is exercised not because of a difference in purely transportation conditions but on account of a different degree of prosperity in one industry than in another, it is an unlawful act and must be annulled whether founded upon a misinterpretation of the Hoch-Smith Resolution or based on an erroneous conception that it already possessed such power. If there is no statutory basis for such a power, the order falls because the Commission can exercise only such powers as are delegated to it by statute. If there is a statutory authority the order is void because Congress is without power to enact a statute regulating industry through the medium of regulating rates.

Whatever the source of the asserted power of the Commission, whether in the Hoch-Smith Resolution, or as a power alleged to already exist, the final paragraph of the Resolution as interpreted by the Commission furnishes a clear measure of the power which the Commission assumed to exercise. The Commission interpreted this paragraph to require it to take a definite and prescribed action with respect to rates on agricultural products suffering from depression. That the Commission in this case rigidly carried out this

mandate as it interpreted it, is patent from an examination of the report.

The Issues.

Apart from the issue of confiscation, to which we will refer later, the position of the parties may now be summarized as follows:

1. Appellants contend:

   a. That the order is based on the standards prescribed in the Hoch-Smith Resolution as interpreted by the Commission and not on Section 1 of the Act.

   b. That the Commission construed the Resolution as authorizing and requiring it to reduce an existing rate on agricultural products suffering from depression irrespective of whether it was reasonable, if it was in excess of the "lowest possible lawful rate" as defined by the Commission.

   c. That the order is invalid because:

      1. It violates Section 1, which prescribes only that the rates shall be just and reasonable, and not that they shall be "the lowest possible lawful rates", and Section 15, which permits the Commission to fix rates only when it finds that the existing rates are unreasonable.

      2. It is a regulation of industry and not a regulation of commerce, and hence is beyond the delegated authority of the Commission and the power of Congress and vio-

lates the constitutional rights of the carriers.

2. Appellees contend in their briefs:
   a. That the case is an ordinary rate case; that the Commission found the rates unreasonable under Section 1, and that there is substantial evidence to support such finding.
   b. That after first finding the rates unreasonable, the Commission then fixed new rates, taking into consideration the principles announced in the Hoch-Smith Resolution (i. e., that the industry was in a state of depression); that the Resolution did not change the law and that the same result could have been reached if the Resolution had never been enacted or invoked; that there is a zone of reasonableness* within which the Commission may fix rates, but that the Resolution "calls for the exercise of the Commission's discretion in a particular manner; that is that the Commission shall make rates upon products of agriculture affected by depression at the lowest rates which are lawfully possible * * *". (Brief of United States and Interstate Commerce Commission, p. 35)

It is conceded by the Intervener that if the Commission has based the new rates on industrial conditions or if the Commission did not find the rates to be unrea-

*Brief of United State and Interstate Commerce Commission (p. 33) "The Resolution itself, by the use of the words '*lowest* possible lawful rates' recognizes that there may be more than one lawful rate, that there is a 'zone of reasonableness,' and that there are flexible limits to the Commission's discretion in the prescription of rates for future application."

sonable under Section 1,† then its action is invalid; and if the Resolution authorizes rates to be fixed on the basis of commercial conditions it is unconstitutional.

The issues therefore are:

1. Did the Commission find the old rates unreasonable upon the basis of Section 1, or did it find only that they were in excess of the "lowest possible lawful rates" as defined by the Commission in interpreting the Resolution?
2. If it did not find that the old rates were unreasonable upon the basis of Section 1, is its action in fixing new rates which it considered as the "lowest possible lawful rates" (i. e., at the lower extremity of the zone of reasonableness) lawful, such action being taken because the deciduous fruit industry was in a state of depression, and not because the old rates were unreasonable. Counsel for the Appellees has conceded that if the order were so based it would be invalid. The sole question therefore remaining is whether the Commission found the old rates unreasonable under Section 1.

The record shows that the order is based on the standards prescribed in the Hoch-Smith Resolution as interpreted by the Commission and that the Commission did not consider the issue to be whether, or pretend to find that, the existing rates were unreasonable under Section 1, but only that they were in excess of

† Intervener's brief p. 46: "The Commission recognized that the existing rates must be proved unreasonable in accordance with accepted principles of rate making before it could proceed to accord products of agriculture affected by depression the lowest possible lawful rates compatible with the maintanance of adequate transportation service."

the lowest possible lawful rates, as defined by the Commission.

The Alleged Finding of Unreasonableness.

In this connection it is pertinent to point out that the validity of the order must turn upon the substance of what the Commission did, and not what it may have said it did, or what it might have done. The whole case of the Appellees depends upon their showing that the following isolated expression in the report:

> "We are of the opinion and find upon a consideration of the whole record that the rate of $1.73 * * * is and for the future will be unreasonable to the extent that it exceeds or will exceed $1.60 * * * and that such rates are the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and are necessary to promote the freedom of movement by defendants of the specified products of agriculture, now affected by existing depression in agriculture."

is a finding that the existing rate was unreasonable, under Section 1 of the Act and not merely that it was "in excess of the lowest possible lawful rate" enjoined by the Resolution as interpreted by the Commission, and that the new rate was a reasonable rate under Sec. 1, and not the "lowest possible lawful" rate as defined by the Commission, although the Commission said in terms that it was the lowest possible lawful rate.

Viewed in the light of what the Commission did, what it said it did and what the complainant before it urged it to do, it is apparent that the finding just quoted represents only the Commission's view that the existing rate was in excess of the "lowest possible

lawful rate" enjoined by the Resolution (i. e., at the bottom limit of the zone of reasonableness).

No magic or infallibility attaches to the statement in the Commission's report that rates are "unreasonable." In the Willamette Valley lumber rate case (219 U. S. 433) the Commission found (14 I. C. C. 61):

> "* * * the present rate * * * is unjust and unreasonable."

In the first Lemon Rate Case (190 Fed. 591) the Commission found (19 I. C. C. 148):

> "* * * upon full consideration we are of the opinion that the present lemon rate * * * is unreasonable * * *."

In the Passenger Scrip Case (263 U. S. 603) the Commission found (77 I. C. C. 200):

> "We further find that the rates resulting from that reduction will be just and reasonable for this class of travel."

In each of these cases, counsel for the Government and the Commission advanced the same arguments in support of the order that are advanced here: That while it is true that the Commission heard evidence bearing upon commercial and industrial conditions, nevertheless there was evidence upon the question of whether the rate was intrinsically reasonable or unreasonable, and the Commission having made an express independent finding that the rate was unreasonable, the order was thereby rendered immune from judicial review.

Yet in each of these cases, the court experienced no difficulty in finding upon an examination of the reports

of the Commission that the Commission had not used the word "unreasonable" in the sense intended by the Act, and that its orders were invalid.

The carriers under the law have the right to initiate rates. If the rates they publish are not unreasonable no power exists in the Commission to alter such rates. In *Interstate Commerce Commission v. Louisville and Nashville R. R. Co.*, 227 U. S. 88, the court says, at page 92:

> "Under the statute the carrier retains the primary right to make rates, but if, after hearing, they are shown to be unreasonable, the Commission may set them aside and require the substitution of just for unjust charges. The Commission's right to act depends upon the existence of this fact, and if there was no evidence to show that the rates were unreasonable, there was no jurisdiction to make the order. * * *"

In this case it is contended by Appellees that there was such evidence, but a fair reading of the Commission's opinions shows that there was no finding that the rates were unreasonable, under the standard prescribed by the Act, but only a finding that the rates exceeded the "lowest possible lawful rates" as defined by the Commission. There was, therefore, no jurisdiction in the Commission to make the order.

What Power did the Commission Attempt to Exercise Here?

What did the Commission do here? Did it consider the question before it to be as the Appellees claim, whether the rates were unreasonable under Section 1,

or was it as we contend, whether such rates were the lowest possible lawful rates under the Hoch-Smith Resolution as interpreted by the Commission? It is contended by Appellees that the case was a mere rate case under Section 1, that the Resolution "played a distinctly secondary role" (Intervener's brief, p. 16), and that the Resolution did not change the existing law. Appellees further contend that as applied by the Commission, the Resolution "contains nothing which would lead the Commission to reach a result different from that which it could properly have reached without the aid of the Resolution" (Intervener's brief, p. 30).

If this be true;

a. Why did the shippers in their complaint to the Commission (R. 130) allege in almost every paragraph that the rates were in violation of the Hoch-Smith Resolution and the existing rate was not "the lowest possible lawful rate compatible with the maintenance of adequate transportation service" (R. 146); that the complainant "brings this complaint at this time to the end that relief may expeditiously be afforded, in pursuance of said Resolution" (R. 147), and that after hearing the Commission shall establish rates "such as will promote freedom of movement of said fruits at the lowest possible lawful rates compatible with the maintenance of adequate transportation service"? (R. 148)

b. Why does the Commission say in its report (1) that the Resolution is "primarily relied upon in the instant case," (R. 18), (2) that "these prices are shown to us in compliance with the terms of the Hoch-Smith resolution" (R. 23),

(3) "in complainant's view the markets must be brought nearer by means of rate reductions" (R. 22), (4) that "while undoubtedly overproduction and distribution pratices are factors in the situation the *essential* fact still remains that the industry is in serious financial straits" (R. 25), (5) that "in complainants view the existing depression in California deciduous-fruit industry is precisely such as the Hoch-Smith Resolution was designed to assist" (R. 25)?

c. Why does the Commission early in its report devote pages (R. 26-28) to a discussion of the Resolution and its interpretation, and reach the conclusion "that 'the lowest possible rates' which we may prescribe under the resolution on any given agricultural traffic as to which depression has been shown must be somewhere within the zone of reasonableness permitted by the flexible limits of discretion reposed in us, and that such rates must be put as near the lowest limit or level or that zone as is compatible with the maintenance of adequate transportation service" (R. 28)?

d. Why in distinguishing other cases does the Commission say,

(1) "Moreover the case was decided prior to the passage of the Hoch-Smith resolution" (R. 41); that such cases would not necessarily constitute precedents against the granting of relief if the same rates were assailed with an adequate showing of a change in facts or "in the basic law applicable" (R. 41),

(2) "Under the Hoch-Smith Resolution the

relative prosperity of an industry over a period of years may be considered as well as its relative adversity" (R. 42)?

e. Why does the Commission devote much space to a discussion of the meaning of "freedom of movement" as used in the Hoch-Smith Resolution and the "effect of the proposed reduction on the industry" (R. 48), and why does it say that while "it is impossible to prophesy with assurance what results would flow from a reduction in rates. * * * Complainant claims that a reduction in rates will prove of direct benefit to the producer * * *" (R. 49), also "assuming that the reduced rate would not be reflected in reduced selling prices, the reduction here sought * * * would afford substantial relief to the growers who bear probably the major portion of charges directly or indirectly, and would mean the difference between a loss and a small profit to many of them" (R. 49)?

f. Why does the Commission say that the economic situation of the industry "is such that it clearly comes within the terms of the Hoch-Smith resolution as entitled to the lowest possible lawful rates" (R. 56)?

g. Why did it say "The *primary* issue to be determined, therefore, is whether the $1.73 rate assailed approaches the lowest limit or level of the zone of reasonableness permitted by the flexible limit of discretion reposed in us" * (R. 56)?

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*Note that the "primary" issue as stated by the Commission is not whether the existing rate is reasonable but whether it is at the lowest limit of the zone of reasonableness. Contrast this with Intervener's contention that the Commission first determined the rate was unreasonable under Section 1, and then and only then proceeded to fix a new rate at the lowest limit of the zone of reasonableness. (Intervener's Brief, p. 28)

h. Why did the Commission recite as among the nine important differences between this case and the prior case where the same rates had been held reasonable, the following:

"1. The Hoch-Smith Resolution was approved subsequent to the presentation of the prior case."

"2. The depression in the deciduous fruit industry has continued unabated * * *."

"3. The present economic showing is fully responsive to the terms of the Resolution" (R. 57)?

j. Why did the Commission make its ultimate finding "We are of the view that the present rates are in excess of the lowest possible lawful rates as herein defined." (R. 58) rather than follow the simpler practice of stating that the present rates are unreasonable under Section 1?

k. Why did the Commission find that the new rates "are the lowest possible lawful rates" (R. 59) instead of finding them just and reasonable rates under Section 15?

l. Why did Commissioner Eastman in his concurring opinion say that "while it was by no means clear that the rates in issue are unreasonable and ought to be reduced complainant is entitled under the Hoch-Smith resolution to the benefit of the doubt" (R. 59)?

m. Why does Commissioner Woodlock (Commissioner Taylor concurring) say "The Hoch-Smith resolution (which governs the disposition of this case)" (R. 60)?

n. Why does Commissioner McManamy say "The

majority report as well as the concurring expressions show that the decision is predicated on the Hoch-Smith Resolution." (R. 63)?

o. Why does the Commission in its Report on Further Consideration say "we are not convinced that the rates prescribed are below what are necessary to afford complainants the lowest possible lawful rates compatible with the maintenance of adequate transportation service." (R. 68)? Why did not the Commission merely say that the new rates were just and reasonable rates?

p. Why has the Commission constantly cited this case as one wherein the Hoch-Smith Resolution was applied?

Georgia Peach Growers Exch. v. A. G. S. R. R., 139 I. C. C. 143,
Boston Wool Trade Assn. v. Apache Ry., 144 I. C. C. 111,
Lake Cargo Coal, 139 I. C. C. 367.

q. Why is this case referred to in the Forty-first Annual Report of the Interstate Commerce Commission (page 67) as one wherein "we have had occasion to construe the Hoch-Smith Resolution"?

r. Why did Commissioner Eastman in the hearing on the Appropriation Bill for 1930 where funds were asked for to carry on the work under the Hoch-Smith Resolution testify:

"Mr. Eastman: In the first place, I think that I ought to say that the Hoch-Smith Resolution has had some positive results in addition to the hearings in these investigations.

"Mr. Summers: In the southeastern part of the country, and also in the southwestern part of the United States.

"Mr. Eastman: And also on the Pacific Coast, in the reduction of rates on deciduous fruits, for example. The carriers, by the way, carried that case to the courts, and they are attempting to secure an interpretation of the Hoch-Smith Resolution through the medium of that case, but those reduced rates have gone into effect"?

(Record of Hearing, pp. 182-183)

It is submitted that the answer to these questions inevitably results in the conclusion:

1. That the Commission construed the Resolution as requiring it to reduce rates on agricultural products suffering from depression, irrespective of whether the existing rates were just and reasonable, if they were in excess of the "lowest possible lawful rates", (i. e., at the lowest limit of the zone of reasonableness).
2. That the Commission construed the Resolution as requiring it to fix rates for agricultural products affected by depression at the lowest limit of the zone of reasonableness, irrespective of the cause of the depression or whether it was due in any respect to or reflected in transportation considerations.

From this we submit that the following propositions have been established, as set forth in our brief:

1. That the Commission acted in excess of its lawful powers, in that it considered that it had power

to set aside reasonable rates established by the carriers, whereas in fact neither the Resolution nor the Act confers this power on the Commission, the carriers still retaining the absolute right to establish and maintain rates so long as they were reasonable.

2. That the action of the Commission, pursuant to the Resolution is a regulation of industry and not of commerce and is therefore void.

The Rate Evidence.

The Appellees make much of the fact that there was evidence bearing upon the reasonableness of the rates attacked, stating:

> "If the Commission was not concerned with testing the reasonableness of the existing rates under Section 1 of the Interstate Commerce Act, it is difficult to see why it should have devoted one-half of its original report to a discussion of matters which pertain only to the question of the reasonableness of the existing rates in accordance with accepted rate-making principles." (Intervener's brief, pp. 18-19.)

The quantity of evidence introduced does not prove that the Commission proceeded in accordance with law, or that its order is valid, or that such evidence was deemed by Commission as sufficient to justify a finding that the rates were unreasonable measured by the standard of Section 1.

What use did the Commission make of the evidence? For what purpose did it weigh it? What were its conclusions based upon it? The record is clear on these points.

The Commission considered the evidence only for

the purpose of determining whether the existing rate was "the lowest possible lawful rate" under the Resolution, and for no other purpose. This is clear from the statement in the Report (R. 56):

> "The primary issue to be determined, therefore, is whether the $1.73 rate assailed approaches the lowest limit or level of the zone of reasonableness permitted by the flexible limit of discretion reposed in us"

and by the ultimate finding (R. 58):

> "* * * we are of the view that the present rates are in excess of the lowest possible lawful rates as herein defined."

If the primary issue, in the view of the Commission, was whether the rates were "the lowest possible lawful rates" and not whether they were reasonable or unreasonable, it is obvious that the evidence was considered and viewed with the single object of reaching a determination of that issue. The evidence was entirely relevant to that issue, and was undoubtedly used for that purpose. It is futile to speculate as to what the view of the Commission would have been had it properly pursued the law and considered the evidence from the standpoint of the reasonableness of the existing rate. That issue was not considered by the Commission, and the fact that there was evidence that might have been used for this purpose may point to a lost opportunity, but it certainly is no proof that it was used for that purpose.

This Court Cannot Substitute Its Judgment for That of the Commission.

Having invoked the aid of the Resolution in securing reduced rates, the Appellees now strive to convince

the court that the same result would have been attained if the Resolution had never been enacted, if the shippers had never invoked it or the Commission had never relied upon it.

However that may be, the Resolution was the basis of the Commission's action; its order is founded upon it. In making its order the Commission misapplied the law, and its order is, therefore, invalid. It is beside the issue to contend that there was a plenitude of evidence upon which the Commission could have found the rate unreasonable under Section 1. The fact is that the Commission did not consider that to be the issue, and confined itself to the single issue as to whether the existing rate was in excess of "the lowest possible lawful rate." What it would have done had it correctly interpreted and applied the law, is a matter of speculation, into the realms of which this court cannot enter. This court may not substitute its judgment or discretion for that of the Commission. The order is void because the Commission applied the wrong legal measure. If the shippers believe that the rate is unreasonable measured by the proper standards of law, their course is to initiate a new proceeding before the Commission in which the Commission will apply the proper standards.

Contrasting Views

As perhaps the best expression of the contrasting views as to the proper meaning and interpretation of the Resolution, we quote the following expressions.

Commissioner B. H. Meyer, on January 15, 1928, publicly stated his interpretation of the Resolution to be:

"You are all familiar with what is known as the Hoch-Smith Resolution. * * * While in form it is a resolution, in essence it is an amendment to the Interstate Commerce Act and has all of the force and effect of law. * * *

"From the time of its creation to the passage of the Hoch-Smith Resolution the Interstate Commerce Commission has said hundreds and probably thousands of times in its official reports that its duty under the law was to deal with transportation conditions and not with commercial conditions. * * *

"The Hoch-Smith Resolution changed all this. It not only authorizes us but it directs us to take into consideration commercial conditions. * * *

"Responsive to the direction contained in the third paragraph of the Hoch-Smith Resolution to the effect that the Commission shall with the least practicable delay prescribe the lowest possible lawful rates on the products of agriculture which are affected by depression compatible with the maintenance of adequate transportation service, we have issued a number of reports in which such rate changes have been made, based in part or entirely upon the third paragraph of the Resolution. One of these orders has been taken into court by the carriers and before very long we hope to have the benefit of the views of the Supreme Court of the United States with reference to the proper interpretation of the Hoch-Smith Resolution.*

"I might summarize what appears to me to be the underlying theory expressed in the Resolution by saying that it attempts to make the railroads of the United States the shock absorber and balance wheel for the entire economic life of the country to the extent to which this may be accomplished through the instrumentality of railroad rates."

* This case is the one referred to.

The contrary view which, in our opinion, expresses the true intent and purpose of the Resolution was stated by Senator Glass before the Committee on Interstate Commerce of the United States Senate when that Committee was considering the confirmation of John J. Esch to be a member of the Interstate Commerce Commission. Senator Glass said (Report of Hearings, pp. 76-77):

> "There is nothing unconstitutional about the Hoch-Smith Resolution. There is really nothing contrary to the statute in the Hoch-Smith Resolution. I have not been here, but I assume your attention has been called to the fact that the Resolution directs this inquiry and the conclusions to be had in accordance with the law. Therefore, the Hoch-Smith Resolution did not modify in the remotest way the statute itself. It was a mere expression of the sense of Congress that if at that time, momentarily, any relief could be given to these interests in accordance with law, that Congress would desire it to be done. That is all there is to the Hoch-Smith resolution."

And, as illustrative of the course of this case before the Commission in both the first and the second proceeding, we quote the following statement of former Commissioner Esch made before the Committee on Interstate Commerce of the United States Senate when that Committee was considering confirmation of his appointment (page 33):

> "We have employed that Hoch-Smith resolution in a recent case known as the Western Fruit Case, wherein the complainant filed a complaint with the Commission claiming that their rates on deciduous fruits from the Pacific Coast to eastern

points of destination were unreasonable. That was heard prior to the passage of the Hoch-Smith Resolution. We dismissed the complaint. After the complaint was dismissed and the Hoch-Smith Resolution was adopted in January, 1925, the complainant filed a new complaint, alleging that under the Hoch-Smith Resolution as to the depression in agriculture or any agricultural products that it should be considered as a part of its complaint and cause of action. We heard that case under the new complaint. We found the rates to be unreasonable to the extent of 15 cents per hundredweight to points east of Colorado common points, and 12 cents in excess to Colorado common points, the reduction being, as I recall it, down to $1.65 to eastern destinations. And in that report we indicated that the reason for granting the reduction of those rates was the Hoch-Smith resolution. After that decision was handled down 48 western carriers immediately went to the United States District Court in San Francisco to enjoin our orders on the ground that the Hoch-Smith Resolution was not capable of the interpretation we had given it, and if it were it was unconstitutional. The United States District Court did not grant the injunction, and an appeal, I understand, is to be taken, so that we are in the way of having the Hoch-Smith Resolution interpreted by the Supreme Court."

To Summarize:

The order was founded upon the Hoch-Smith Resolution.

The Commission interpreted and applied the Resolution as requiring it to fix rates upon the following basis:

1. If the rate attacked is on an agricultural product,
2. If that product is suffering from a depression (no matter what the cause),
3. If the existing rate is in excess of "the lowest possible lawful rate" (as defined by the Commission to be at the lower limit of the zone of reasonableness), irrespective of whether or not it is reasonable under Section 1,

then upon this showing alone, the Commission must reduce the existing rate to "the lowest possible lawful rate" as defined by it.

As the lowering of the rate is purely mechanical and is brought about by the depression in the industry (irrespective of its cause or whether it is due to or is reflected in transportation conditions), it becomes obvious that the order is void because

1. The rate is based upon commercial considerations and not upon transportation considertions,
2. The rate is a regulation of industry and not of commerce,
3. It is in excess of the power conferred on the Commission,
4. It is in excess of any power possessed by Congress.

As has been pointed out, the Commission never possessed the power which it assumed to exercise. Nor did the Hoch-Smith Resolution, properly interpreted, pretend to confer this extraordinary power upon the Commission. The Resolution, properly interpreted, did not change the existing law. It is therefore not unconstitutional. But the order of the Commission, based upon

the assumed power to shift the rate burden from depressed agriculture to other industries, to regulate industry through the medium of regulating rates, and to set aside reasonable rates fixed by a carrier, is we submit, clearly invalid.

Other Issues.

In our brief we have discussed several additional issues, such as the error of the Commission in undertaking to apply the Hoch-Smith resolution, contrary to its terms, in a proceeding involving only the rates on a single commodity and not a rate structure; the holding of the Commission that the new rates are "necessary to promote the freedom of movement" of these deciduous fruits when the record shows without contradiction that they were moving with extreme freedom under the old rates, in fact that the depression complained of is due principally to the excessive freedom of movement, beyond the consuming capacity of the markets; and the failure of the Commission to meet its obligations under section 15A of the Interstate Commerce Act by leaving undisturbed the former rates, not unreasonable in themselves, when the carriers were found to be not making a fair return on the value of their properties, or at the very least, if rates on agricultural products were reduced because of a financial depression in the industry (not found to be caused in any degree by the rates charged) to redistribute transportation rates so as to preserve intact the net revenues of the carriers. The Appellees have discussed these same issues. By our failure to comment further thereon we do not in any way recede from the position taken in our brief. We feel that we have fully covered these matters and rely on the argument already made.

The issues are relatively simple, the Appellees have brought forth no new propositions in respect thereto and further discussion is unnecessary.

Confiscation.

One of the main issues in the case does, however, require some further comment. In response to our charge of confiscation, admittedly a ground for reversal of the Order if supported by the facts, Appellees are driven to the expression of doubts regarding the revenues under the new rates and the cost of handling the traffic, entirely inconsistent with the views expressed by the Commission itself when it decided the case, and unsupported by the record. It is now claimed that the revenues under the new rates will be greater than alleged in our complaint, that the loss of revenue will be in large part made up by an increase in the minimum weight on grapes and that the cost of service will, or may be less than alleged by the carriers. After prolonged argument to the effect that full reliance should be placed on the single expression of the Commission, in the concluding paragraph of its opinion (R. 59) "* * * the rate of $1.73 * * * is, and for the future will be, unreasonable * * *" without regard to the preceding discussion by the Commission or the succeeding statement which indicates the sense in which the word unreasonable was used, counsel for appellees now seek to cast doubt upon the cost study presented by the carriers, to suggest *possible* infirmities therein, to assume that it could have been discredited by cross-examination which was not undertaken or by contrary evidence which was not presented, and upon such assumptions they argue that it is "permeated with fallacy" (Intervener's brief, p. 74), and wholly unreliable.

We will not undertake to reply to all these newly discovered doubts as to the accuracy of the cost study advanced by counsel for appellees. The parties had their day in court. Then was their opportunity to show these errors if there was any foundation for the assertions now made. No limit was placed upon their cross-examination or rebuttal evidence. In fact certain information was called for by complainant before the Commission to be furnished after the hearing closed, and all the information requested was furnished. The fact that this testimony was offered on the last day of the hearing is no legitimate criticism of its validity. We have advanced no objection to any of complainant's testimony because of the time when it was presented. Nor is any greater comfort to be derived from the fact that it was continued on a single sheet of paper, unaccompanied by the detailed calculations from which "a check can be made of the mechanical or clerical accuracy of the results" (R. 54) now so strongly relied on. If such data were desired it could have been requested. It was not requested by complainant or by the Commission which has ample power to investigate the carriers' accounts. It was presented by an accountant of recognized standing and accompanied with testimony as to the propriety of its application to 1926 traffic (R. 480) in view of the fact that it was made in 1923. Testimony was also given (R. 482) as to the propriety of measuring costs on the other routes, composed in every case of two or more lines, by those incurred on the single-line route of the Santa Fe. In short the showing was adequate, and was not contradicted.

The best answer to the contentions now advanced by counsel is to be found in what the Commission itself

said about the cost study, when it thought its Order could be supported thereby. After criticising other cost studies offered by the carriers, relied on by us only to show general conditions and the propriety of projecting the Santa Fe costs east of Chicago, and to which counsel now devote many pages of their briefs, the Commission said (R. 53):

> "It will be unnecessary to refer to them further, as the record affords an additional study made by the Santa Fe in 1923 which comes nearer to being constructed upon a sound basis than the others referred to."

The Commission goes on to describe the cost study, and mentions certain objections made thereto by complainant. After commenting on the absence of details from which mechanical and clerical accuracy could be checked (the statement having been introduced and verified by an expert accountant, testifying under oath) the Commission says, (R. 54) "The methods employed in reaching the results seems to be satisfactory. * * * Other items were reasonably apportioned to the grape trains * * *." Certain corrections on account of empty car haul are then made, to which we will refer shortly, and the Commission finds (R. 55) "* * * an indicated cost of $414.02 per car. The average revenue per car in 1926 under present rates was $489.59." It is finally noted that nothing is including for taxes or rentals and and the study covers a single-system operation. A single system operation is generally conceded to be cheaper than where two or more lines participate in the haul, as is the case on every route from California except the Santa Fe.

The Commission later states that "the reduction

requested, if granted, would not affect the maintenance of adequate transportation service," (R. 56) and finally in its statement of the grounds of its decision (R. 58) says that its conclusion is reached after "giving due weight to the cost study presented by defendants." Such were the views of the Commission as to the cost study *when it made the order* here under attack. By repeated reference the Commission clearly indicates that the cost study was deemed by it to be like similar testimony referred to by this court in *Northern Pacific Railway Company v. Department of Public Works of the State of Washington*, 268 U. S. 39, where at page 43, Mr. Justice Brandeis said:

> "This evidence was in character persuasive. It was fairly specific, direct and comprehensive."

Such was the view of the Commission as to the cost study when the order here complained of was formulated and promulgated. In a petition for reconsideration the carriers called the Commission's attention to an error made by it amounting to $20.79 per car due to the use of an erroneous percentage of empty-car haul. In its Report on Further Considerations (R. 66) this is admitted, "It is true that this suggestion of a reduction of the allowance for the return of empty cars was unwarranted." Then, for the first time, arise any questions about the costs, and still additional questions are now suggested in the brief filed by counsel for the Appellees. It is found (R. 67) that the difference between the corrected cost figure and the average revenue *under the old rates* would not be eliminated by the reduction, if an increased earning is assumed from the reduced rates by reason of a higher minimum. No one suggests earnings in excess of $480 per car compared to $489.59 under the old rates.

In its Report on Further Consideration the Commission states (R. 67) "we have not accepted the cost study as indicating *precisely* the actual cost of handling this traffic" and again (R. 68) "Some additional *possible* defects in the study have come to our attention" and (R. 68) "While consideration was given to the cost study submitted by defendants it was not the *controlling* factor in our decision."

It is now contended that the study is "permeated with fallacy," that it is utterly unreliable and that there never was and never could be a reliable cost study of any single item of traffic. Speculations are copiously indulged in by counsel as to what corrections might be made therein and it is freely charged that it contains improper items, not consistent with its purported scope. We will not prolong this discussion by any further mention of these contentions, unsupported by evidence, hypothetical in character and inconsistent with the Commission's characterization of the study given when it made the order.

Suffice it to say, the Commission had the study before it. It, or complainant, could have called for further information if desired, but did not do so. If so obviously improper as now suggested, and so "permeated with fallacy" and if a crude attempt to perform the impossible (any accurate cost study being an impossibility according to counsel for the Commission, brief p. 71) why did the Commission say that "the methods employed * * * seem to be satisfactory" and that items "were reasonably apportioned" (R. 54) and why did it give "due weight to the cost study presented by defendants" (R. 58)? If it were subject to all these infirmities and fallacies, if it were a chimerical pursuit of an unattainable object it was entitled to no weight in

the disposition of this case. It should then be discarded and was not entitled to be taken as indicating in any way the cost of service. It was obviously never a "controlling factor" in the Commission's decision but under the condition now suggested by counsel it could not have been properly a factor of any kind.

It is obvious that it was accepted by the Commission, perhaps not as indicating "precisely" the cost of service, but certainly a close approximation of such cost. It was not contradicted in any way and was the only evidence of cost available to the Commission. In view of the task to which it set itself, upon a complaint which invoked the Hoch-Smith resolution, to find the "lowest possible lawful rate" that rate being just above the point of confiscation it is submitted that evidence of the cost of service was indispensable. To avoid confiscation cost must be returned plus a substantial profit. How can it be determined whether the profit is substantial if the cost of service is unknown. If the cost study be accepted, as it was by the Commission, it proves the rates confiscatory. If it be rejected, as counsel now undertake to do, the Commission's order is proved to be capricious, an act without evidence and void.

Whether the cost study were accepted as accurate, as a fair reading of the opinion of the Commission implies, or taken as a mere approximation, which is the least to be said in view of the finding that due weight had been given thereto (R. 56) it had not changed in character between the original opinion and that on further consideration. It was not rejected at any time. It remains for counsel for the Appellees

to do what the Commission itself refused to do. The weight given the study in the "due consideration" thereof was not changed in the two opinions. How then could the "lowest possible lawful rate" be the same when the operating costs (not including taxes or rentals) were erroneously thought by the Commission to be $414.02 as when they were corrected to $433.68? Regardless of how accurate either figure was thought to be, it is impossible for the irreducible minimum rate to be the same in both cases. If the rate was as low as it could be placed in view of the Constitutional rights of the carriers in the one case, (and that is the rate that the Commission undertook to fix), and such cost figures as were used, to any extent, were later admitted to be in error by the amount of $20.79 per car, by reason of the Commission's error in computing the empty haul it necessarily follows that some increase must be made to this "lowest possible lawful rate." The rate is confiscatory unless it returns the cost of service plus a substantial profit (*Northern Pacific Railway Co. v. North Dakota,* 236 U. S. 585). The substantial profit at first allowed is diminished by approximately $20 per car, on a traffic of approximately 80,000 cars per annum. It was necessarily confiscatory after the Commission's error was conceded.

Conclusion.

Our purpose in filing this reply brief is confined to the effort to more clearly define the fundamental issues, as to which counsel for Appellees have now adopted a position which is not only inconsistent with, but,

it seems to us, directly contradictory to that taken by the Commission in its opinions in this proceeding.

We submit that the fundamental questions here presented are: Did the Commission undertake to exercise a power which had never been entrusted to it? Has the Commission power to set aside reasonable rates fixed by a carrier in the exercise of its managerial functions, because they apply to an agricultural industry suffering from depression, and are in excess of the "lowest possible lawful rates" as defined by the Commission? May the Commission fix rates on a lower basis for an agricultural industry suffering from a depression, than it may fix for any industry enjoying prosperity, merely because of that depression and not because of transportation conditions? May the Commission shift the burden of rates from depressed agricultural products onto the products of the forest and the mine? If the Commission undertook to exercise such power the purported source of the power is immaterial. We submit that it was not and could not have been granted by the Hoch-Smith Resolution. This court has often held that it had not been granted by the Interstate Commerce Act prior to the adoption of the Resolution. It is an attempt to regulate industry,

not to regulate commerce, and we submit, clearly beyond the power of the Commission.

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CHARLES ELMORE CROP
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THE ANN ARBOR RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, et al.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION and THE CALIFORNIA GROWERS' & SHIPPERS' PROTECTIVE LEAGUE,

Appellees.

BRIEF OF APPELLANTS.

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Chronology.

August 31, 1923	First complaint filed (R. 5).
January 30, 1925	Hoch-Smith Resolution signed.
June 25, 1925	Commission finds rates not unreasonable (R. 281).
March 2, 1926	Commission denies complainants' application for reconsideration (R. 6).
December 27, 1926	Second complaint filed attacking the rates under the Act and the Resolution (R. 139).
July 20, 1927	Commission makes order reducing rates here attacked (R. 6).
November 14, 1927	Commission makes Report on Further Consideration refusing to modify Report and Order (R. 8).
November 23, 1927	Carriers file Bill in Equity to annul Order (R. 1).
January 18, 1928	District Court denies stay and preliminary injunction (R. 99).
February 10, 1928	Rates published by carriers under protest.
May 9, 1928	District Court enters Final Decree dismissing carriers' bill and denies stay pending appeal (R. 107).
May 10, 1928	Appeal allowed (R. 126).
May 28, 1928	Motion for stay pending appeal denied.
February 25, 1929	Appeal argued on merits in this Court and submitted.
May 27, 1929	Submission set aside and cause restored to the docket for reargument.

In the Supreme Court
OF THE
United States

October Term 1929.

No. 7

THE ANN ARBOR RAILROAD COMPANY, et al.,
Appellants,
vs.
THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION and THE CALIFORNIA GROWERS' & SHIPPERS' PROTECTIVE LEAGUE,
Appellees.

BRIEF OF APPELLANTS.

This is an appeal from a decree of the United States States District Court for the Northern District of California (constituted as provided in the Urgent Deficiencies Act of Oct. 22, 1913 (38 Stats. 219)),

(NOTE: All references thus (R. .....) are to pages of the Transcript of record.)

(All italics are ours.)

which dismissed a bill filed in behalf of more than four hundred carriers to annul an order of the Interstate Commerce Commission.

Opinions.

The Memorandum Opinion of the District Court refusing to grant a temporary injunction is reported in *Ann Arbor R. R. Co. v. United States,* 30 Fed. (2d), 940. The Memorandum Opinion of the District Court dismissing the bill is not reported but appears at page 105 of the record.

The Report and Order of the Commission complained of, which reduced the rates for the transportation of fresh deciduous fruits from California to Eastern points is reported in *California Growers' and Shippers' Protective League v. Southern Pacific Co.,* 129 I. C. C. 25; 132 I. C. C. 582.

The Questions Presented.

The carriers contend that the Commission, in reducing the rates for the transportation of deciduous fruits from California to the East, did so, not because the old rates were thought to be unreasonable, but solely in response to a supposed mandate found in the Hoch-Smith Resolution (43 Stats. 801, 49 U. S. C. section 55) directing that "In view of the existing depression in agriculture, the Commission is hereby directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible

lawful rates compatible with the maintenance of adequate transportation service".

The carriers contend that in so doing the Commission misconstrued and misapplied the Resolution in the following respects:

(a) By construing the Resolution as requiring it to reduce an existing rate, not unreasonable in itself, if that rate was higher than the lowest possible lawful rate, as defined by the Commission, whereas the Resolution, properly construed, did not change existing law, under which the Commission has no power to lower a rate unless it is found to be unreasonable, as defined in the Interstate Commerce Act;

(b) By construing the Resolution as requiring, in the case of agricultural commodities suffering from depression, a lower standard of rates than is applied to other commodities, whether or not such depression is caused by, or reflected in transportation, whereas the Resolution, properly construed, made no change in the existing law, under which but one standard of reasonableness is fixed;

(c) By construing the Resolution as requiring it to reduce a rate, not found to be unreasonable under the Act, although the particular carriers concerned, and the carriers as a whole, were not earning the fair return specified in section 15a of the Act;

(d) By applying the Resolution in a proceeding involving a single rate, when the Resolution was intended to and could be applied only in the general investigation therein ordered to be undertaken;

(e) By imposing upon the carriers the burden of proving that their existing rates were not unreasonable and that such rates were the lowest possible lawful rates as defined by the Commission;

(f) By construing the Resolution as permitting the fixing of rates which returned slightly over operating expenses, or which afforded a slight profit, whereas the Resolution did not change the law under which the carriers are entitled to a substantial profit;

(g) By construing the Resolution as effecting a revolutionary change in the whole policy of rate regulation, and as repealing fundamental provisions of the Act, in violation of settled rules of statutory construction that subsequent legislation, unless a contrary intent is unequivocally expressed, should be interpreted consistently with the body of law to which it relates;

(h) By construing the Resolution in a manner which would render it unconstitutional as exceeding the proper scope of regulation of private property devoted to a public service and as being a regulation of industry and not a regulation of commerce, hence an exercise of a power not delegated to Congress itself, and incapable of delegation by it to the Commission.

It is further contended that the rates prescribed by the Commission are in fact confiscatory in that they fail to afford the carriers the substantial return to which they are entitled under the Constitution, and in fact cause the traffic to be transported at a loss as

compared with costs exceeding $2.99 per car, or over $240,000 per year.

The aggregate revenue accruing to the carriers from this traffic exceeded $36,000,000 per annum under the old rates. The reduced rates ordered by the Commission will decrease the revenue of the carriers by an amount in excess of $2,700,000 per annum based upon the 1926 traffic, and will, they claim, cause the traffic to be handled not only without profit, but at an actual loss, beyond the cost of carriage, in excess of $240,000 per annum (R. 14).

With the exception of the question of whether the rates prescribed are confiscatory, the issues are legal and not factual. The essential facts upon which we rely are disclosed on the face of the Commission's Reports and the errors of the Commission in the interpretation and application of the Resolution fully appear therein. Even on the question of confiscation the ultimate facts appear in the Commission's Reports, although some reference will be required to the record for the detailed evidence which the court must examine in connection with the issue of confiscation.

THE FACTS.

The California deciduous fruit industry.

California produces and ships the bulk of the fresh deciduous fruits produced and shipped in the United States. The principal fruits, excluding apples which are not involved here, are grapes, peaches, pears,

plums, apricots and cherries.* By far the most important are grapes. Of these, California, in 1926, shipped 81% of the total carload shipments in the country (R. 19). Most of the remainder are produced in New York, Michigan and Pennsylvania (Exhibit No. 18, R. 218).

The production of deciduous fruits occurs throughout the entire state of California and is one of the most important agricultural activities therein. The transportation of this fruit from California to the East is the largest single item of transcontinental railway traffic and constitutes the greater part of the total perishable traffic (R. 18, 19). The total revenue involved exceeded $36,000,000 annually under the old rates. On the Southern Pacific, one of the principal lines involved, 6.2% of its total freight revenue was derived from deciduous fruit traffic (R. 425).

In 1926, 1,053,755 tons of deciduous fruits were shipped to the East under the old rates, moving in 75,083 cars, of which 58,334 were of grapes, 9,523 of pears, 4,741 of plums and 1,093 of peaches (R. 19).

How the traffic is assembled and moved.

The deciduous fruit traffic originates at hundreds of shipping points scattered throughout California. 51% of the traffic originates on branch lines of the major carriers and 17½% on independent short lines (R. 19). The perishable nature of the commodity requires the utmost expedition and special train service in dis-

*As used throughout this discussion the term "deciduous fruits" means fresh deciduous fruits, other than apples.

tributing empty cars at these many loading points and the movement of the loaded cars to the points where they are concentrated in trains for Eastern movement. The concentration points are Roseville and Colton, on the Southern Pacific, Bakersfield on the Santa Fe, Sacramento on the Western Pacific and San Bernardino on the Union Pacific (R. 285). Almost all of the traffic moves to destinations east of the Mississippi River and north of the Ohio River. However, practically every railroad in the United States participates to some extent in the California fruit traffic, indicated by the naming of over 450 carriers as defendants in the proceeding before the Commission.

Unusual characteristics of the traffic.

The deciduous fruit traffic has many characteristics which distinguish it from ordinary traffic.

1. It is seasonal in character. Movement in substantial quantities begins in June and ends in November, but the peak of the movement is in September and October. In 1925 more than 70% of the traffic moved in these two months (Exhibit 52, folio 389).

2. Deciduous fruit, by reason of its perishable nature, is moved with unusual dispatch. A 154-hour schedule is in effect from California points to Chicago as compared with the ordinary schedule for other traffic of 180 hours or longer (R. 326).

3. All these fruits move in refrigerator cars, a special type of equipment more expensive than any other in freight service with the exception of tank cars, their cost being about 60% more than box cars.

They are proportionately more expensive to maintain and operate (R. 45), and are heavier and hence more expensive to haul than any other type of freight car. Thousands of such cars are owned and maintained by the carriers primarily to accommodate this traffic, and although such cars are used wherever possible in other service, many of them remain idle throughout the entire year except in the fruit season.

4. The heavy weight of the refrigerator cars results in a weight of equipment disproportionate to the weight of the paying load. In 1926 the paying load in the case of these deciduous fruits was but 34.9% of the gross weight hauled as compared with 50% to 60% for most commodities (R. 45).

5. There is a high percentage of empty haul. The loaded movement is almost exclusively eastbound. The necessity for securing prompt return of the cars to California and their relative unsuitability for other traffic prevent the general use of these cars for other purposes, and result in a large percentage of empty movement. In 1926 over 80% of the cars moving eastward under load were returned empty to California, and the empty haul of refrigerator cars was 67.58% of the total loaded haul both eastbound and westbound, as compared to a ratio of empty to loaded movement for all other freight equipment of 44.5% (R. 45).

6. Loss and damage claims are higher on deciduous fruits than on other traffic because of the perishable nature of the commodity. In 1926 claim payments made by four originating trunk lines and their short line connections for loss and damage on deciduous fruit shipments amounted to 2.77% of the total rev-

enue from this traffic (R. 46), as compared with claim payments on all traffic by the Santa Fe of 1% of the total freight revenue (R. 307).

7. Special terminal service accorded to deciduous fruit traffic in the larger cities, increases the carrier's costs. For example, the rentals alone for the Duane Street Pier of the Erie Railroad in New York used for the traffic amount to $3.22 per car handled (R. 47).

8. There are numerous diversions and reconsignments of shipments en route. In 1926 75% of the deciduous fruit cars moved over the Santa Fe were diverted one or more times. In 1926 the average diversions per car were 1.07 (R. 47). No charge is made for diversions west of Chicago. These diversions result in breaking up the trains and reallocation of cars at almost every division point west of Chicago, thus destroying the advantage of trainload movement.

9. The fruit is shipped in most instances before it is sold. Approximately 70% is sold after arrival in the East, only about 30% being sold before shipment (R. 172). The usual practice is for the shipper to start his cars eastward without a definite destination, diverting and reconsigning the cars en route to various possible markets, eventually sending them to the markets which seem to offer the best opportunity of securing maximum prices.

Increase in the production and shipment of deciduous fruit.

The production of deciduous fruits and the shipment thereof from California to the East has had a remarkably rapid and consistent growth. From 6326

carloads in 1905 the volume of shipments rose to 86,795 carloads in 1925, and 78,803 carloads in 1926, an increase of more than 1200% in 22 years. Grapes constitute the greater part of the traffic and the shipment of grapes has increased even more rapidly than the other fruits. The following table (R. 223) shows the carload shipments by years:

Year	*Total*	*Grapes*
1905	6,326	1,602
1906	5,557	2,052
1907	6,459	3,460
1908	10,719	3,819
1909	13,122	5,880
1910	11,936	4,948
1911	12,539	6,374
1912	13,344	6,357
1913	13,332	6,363
1914	16,146	8,773
1915	16,778	9,563
1916	17,891	9,722
1917	24,628	13,944
1918	27,417	16,358
1919	29,971	19,228
1920	35,246	24,152
1921	40,209	28,419
1922	53,961	41,463
1923	69,777	52,339
1924	66,786	54,775
1925	86,795	71,155
1926	78,803	60,786
1927*	89,835	72,330

In 1905 grapes constituted 25% of the total traffic, rising to 40% in 1910, 57% in 1915, 68% in 1920, 82% in 1925, and 77% in 1926. The increase in the

*Shown by affidavit (R. 104).

movement of deciduous fruits, other than grapes, was 381% between 1905 and 1926, while for grapes the increase in the same period was 3794% (R. 223). The shipment of grapes for juice purposes, of minor proportions prior to the enactment of the prohibition law, has increased to a total in 1926 of over 40,000 cars. Juice grapes amount to about 70% of all the grapes shipped (R. 19) and constitute approximately 54% of the total traffic involved.

The increase in production and in the acreage devoted to deciduous fruit production has been equally rapid and consistent. The acreage in grapes increased from 434,907 in 1923, to 635,236 in 1926, or 46% increase in three years (R. 64). An additional 30,000 acres is not yet in bearing (R. 490). The annual increase in the production of all deciduous fruits has averaged about 12% for the three or four years prior to 1927 (R. 188). In the period 1924 to 1926 the production in California increased as follows: Pears 62%, plums 82% and grapes 33-1/3% (R. 25).

The depression in the California deciduous fruit industry.

The complainants before the Commission alleged that there was a depression in the California deciduous fruit industry and this depression had existed for five years. But it was found by the Commission that the depression does not extend throughout the entire industry, and that the prices of peaches and apricots have materially improved (R. 25). The depression is particularly noticeable in the grape industry (R. 21, 22).

The Commission found the average price received in Eastern markets for California deciduous fruits for each year since 1917, to be as follows (R. 23):

	Average price per 100 pounds.		*Average price per 100 pounds.*
Year 1917	$5.43	Year 1922	$6.74
Year 1918	6.93	Year 1923	6.19
Year 1919	7.99	Year 1924	6.58
Year 1920	9.97	Year 1925	5.60
Year 1921	7.82	Year 1926	5.62

Practically all of the deciduous fruits shipped to the East are sold on a delivered basis (R. 49). Fluctuations in the market prices during the season sometimes equal or exceed the freight rate (R. 24). In some instances during the last few years grapes have been left unpicked on the vines, or after arrival at Eastern points have been dumped in the sea because of the inability of the market to absorb the supply.

Rates.

The rates for the transportation of deciduous fruits are blanketed from all producing points in California to large destination groups in the east designated as groups A to M inclusive. Prior to 1911 the rates to the territory east of Chicago had varied between $1.40 and $1.50 per hundred pounds, being higher than the rates to Chicago and points west thereof, which after various fluctuations between $1.25 and $1.15 had become stabilized at $1.15. In 1911 the rates to points east of Chicago were voluntarily reduced to $1.15, then applicable at Chicago and points west. This rate continued in effect, as to the entire territory from

the Rocky Mountains to the Atlantic coast (except the Southeast) until it was raised to $1.44 by the Director General of Railroads, on June 25, 1918. The rate of $1.44 was extended to the Southeast in 1919. On August 26, 1920 the general increases authorized by the Commission resulted in rates of $1.80 to group J (Denver, Cheyenne and vicinity) and $1.92 to the remaining groups, including all points east of group J. On January 1, 1922 the rates were voluntarily reduced by the carriers to $1.62 to group J and $1.73 to the remaining more easterly groups, at which level they remained until ordered reduced in the proceeding now under review (R. 28).

The order of the Commission (R. 7) required that the rates be reduced as follows:

> The $1.73 rate applying to Groups A to M (except J) was reduced to $1.60, a reduction of 13¢ per 100 pounds.
>
> The $1.62 rate, applying to Group J, was reduced to $1.50, a reduction of 12¢ per 100 pounds.

The carriers were authorized in connection with the new rates, to increase the minimum carload weight on grapes from 26,000 pounds to 30,000 pounds, but the minimum on other deciduous fruits was not permitted to be increased (R. 59).

All parties to the proceeding before the Commission agreed that the blanket adjustment should be maintained and that the rates should be considered in view of the average weighted haul (R. 29). The movement to Group J is comparatively small, 627 cars out of

74,456 in 1926 (R. 19) and does not materially affect the average. The weighted average haul of all traffic moving under these rates in 1926 (including group J) was 2,970 miles, showing that nearly all the traffic finds its destination close to the Atlantic seaboard (R. 20).

The rates thus ordered to be reduced had been in effect since January 1, 1922, a period of six years, and more than 400,000 cars had moved under them.

Proceedings before the Commission and in court.

The earlier proceeding before the Commission.

The California Growers' & Shippers' Protective League is an association of growers and shippers of deciduous fruits, having its office at San Francisco. It was the complainant before the Commission in the proceeding in which the order of the Commission here complained of was made. It had also been the complainant in an earlier proceeding, challenging the same rates, which had been decided in favor of the carriers. On August 31, 1923, the Association filed a complaint (Docket No. 15137) alleging that the deciduous fruit rates were unreasonable and unduly prejudicial, in violation of Sections 1 and 3 of the Interstate Commerce Act (R. 282). After hearing, the Commission, on June 25, 1925, dismissed that complaint, finding that the rates were not unreasonable or unduly prejudicial, and that the traffic was then freely moving in interstate commerce. The report of the Commission (100 I. C. C. 79) is printed on page 281 of the Record.

The report concludes (R. 317):

"* * * Considering the rates assailed as a whole, it does not appear that they are unreasonable. On the other hand, the comparisons with the rates from the Northwest and other producing sections indicate that the rates in issue are reasonable.

"We find that the rates assailed as a whole are not unreasonable or unduly prejudicial as alleged. This finding is without prejudice to any conclusion which may be reached upon the later and more comprehensive record concerning the relation of railroad rates to agriculture which is expected to be developed in Docket No. 17000.*

"An order will be entered dismissing the complaint."

Complainant's application for reconsideration was denied by the full Commission on March 2, 1926.

The present proceeding before the Commission.

Less than ten months after the termination of the first proceeding, the same complainant, California Growers' & Shippers' Protective League, on December 20, 1926, filed a new complaint with the Commission, (R. 139) again alleging that the rates were unreasonable and unduly prejudicial, and further specially alleging that the rates were higher than the lowest possible lawful rates compatible with the maintenance of adequate transportation service and were in violation of the Hoch-Smith Resolution. This is the pro-

*Docket 17000 referred to is the general rate investigation initiated by the Commission on its own motion for the purpose of giving effect to the Hoch-Smith Resolution. It is hereafter referred to and is not to be confused with the later proceeding before the Commission, instituted by the California Growers' & Shippers' Protective League, in which the order here complained of was made.

ceeding in which the order here complained of was made.

Various parties intervened, some favoring and others opposing the complaint. The Department of Agriculture and Markets of the State of New York (R. 148), the Department of Agriculture of Pennsylvania (R. 156), and the Department of Agriculture of Michigan (R. 161) intervened in opposition to the complaint. They alleged that deciduous fruits, principally grapes, produced in those states, were being marketed in active competition with the California products, that the producers thereof were suffering from a depression and were faced with the loss to California producers of their natural markets, and that any reduction in the California rates would greatly aggravate the seriousness of their situation. The Arkansas Railroad Commission and the Ozark Fruit Growers Association also intervened alleging that Arkansas growers market their products in the same destination territory and that any reduction in the rates on California fruits would jeopardize the interests of growers and shippers of deciduous fruits in Arkansas unless a similar reduction was made in the rates from Arkansas (R. 154).

After hearing, the Commission, on July 20, 1927, made its Report and Order (R. 16) prescribing the reduction in rates now in question.

It is the order entered upon this finding which the carriers here seek to annul.

The carriers immediately petitioned the Commission for reconsideration. On November 14, 1927, the

Commission reaffirmed its previous order and made a Report on Further Consideration (R. 65).

In the Report on Further Consideration, Commissioner Eastman who had filed a separate concurring opinion to the original report filed a dissenting opinion (R. 68).

Commissioner McManamy dissented in both reports.

The Proceeding in the District Court.

On November 23, 1927, the carriers filed their petition and bill for injunction in the United States District Court for the Northern District of California praying that the order be annulled and further praying that the Court issue a temporary injunction restraining the execution of the order, pending final hearing on the bill (R. 1). Answers were filed by the United States (R. 75), by the Interstate Commerce Commission (R. 79), and by the California Growers' & Shippers' Protective League, the complainant before the Commission (R. 83), which was permitted to intervene (R. 75).

The application for the temporary injunction was heard by Rudkin, Circuit Judge, and Kerrigan and St. Sure, District Judges, who, on January 18, 1928, entered an order denying the application for a temporary injunction (R. 101). *Ann Arbor R. Co. v. United States,* 30 Fed. (2d) 940.

The showing on the application for a temporary injunction consisted of the record before the Commission and affidavits indicating the movement of deciduous fruits under the rates in question.

On May 2, 1928, the case was submitted on its merits on the same record. On May 9, 1928, the Court entered its decree dismissing the bill for want of equity and denying an application for a stay pending an application to the Supreme Court of the United States for a stay pending appeal (R. 107). In dismissing the bill the Court filed a memorandum, which appears at page 105 of the Record herein.

The carriers immediately appealed to the United States Supreme Court from the final decree dismissing the bill, and an order allowing the appeal was entered on May 10, 1928 (R. 126). On May 21, 1928, the carriers applied to this Court for a stay pending appeal, but this application was denied on May 28, 1928.

The Hoch-Smith Resolution.

The Hoch-Smith Resolution (43 Stat. 801, 49 U. S. C. A. § 55) which forms the basis of the order of the Commission, is a joint resolution of the Senate and House, approved by the President on January 30, 1925.

It reads as follows:

> "Chap. 120.—Joint Resolution Directing the Interstate Commerce Commission to take action relative to adjustments in the rate structure of common carriers subject to the Interstate Commerce Act, and the fixing of rates and charges.
>
> "*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That it is hereby declared to be the true policy in rate making to be pursued by the Interstate Commerce Commission in adjusting freight rates, that the conditions which

at any given time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move.

"That the Interstate Commerce Commission is authorized and directed to make a thorough investigation of the rate structure of common carriers subject to the interstate commerce act, in order to determine to what extent and in what manner existing rates and charges may be unjust, unreasonable, unjustly discriminatory, or unduly preferential, thereby imposing undue burdens, or giving undue advantages as between the various localities and parts of the country, the various classes of traffic, and the various classes and kinds of commodities, and to make, in accordance with law, such changes, adjustments, and redistribution of rates and charges as may be found necessary to correct any defects so found to exist. In making any such change, adjustment, or redistribution the commission shall give due regard, among other factors, to the general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years to a natural and proper development of the country as a whole, and to the maintenance of an adequate system of transportation. In the progress of such investigation the commission shall, from time to time, and as expeditiously as possible, make such decisions and orders as it may find to be necessary or appropriate upon the record then made in order to place the rates upon designated classes of traffic upon a just and reasonable basis with relation to other rates. Such investigation shall be conducted with due regard to other investigations or proceedings affecting rate adjustments which may be pending before the commission.

"In view of the existing depression in agriculture, the commission is hereby directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service: *Provided,* That no investigation or proceeding resulting from the adoption of this resolution shall be permitted to delay the decision of cases now pending before the commission involving rates on products of agriculture, and that such cases shall be decided in accordance with this resolution."

Specification of assigned errors intended to be urged, and summary of points upon which the carriers rely to show that the order is invalid.

The carriers contend:

1. The order is based on the Hoch-Smith Resolution which was misconstrued and misapplied by the Commission. The Commission construed the Resolution as requiring it to reduce an existing rate on agricultural products, notwithstanding that the existing rate was reasonable, and otherwise lawful. This was a misconstruction of the Resolution. The Resolution required that the Commission reduce existing rates on agricultural products only if such rates were found to be unreasonable or discriminatory, or otherwise unlawful as measured by the provisions of the Interstate Commerce Act.

Assignment of Error No. X (R. 112). See also Assignments of Error Nos. IX, XI and XII (R. 111, 112).

2. If the Resolution, properly construed, authorizes the Commission to reduce existing reasonable rates, such reduction is only authorized where it is "compatible with the maintenance of adequate transportation service". The Commission has interpreted this to mean that a reasonable rate may be reduced, although the carriers are not earning the fair return specified pursuant to Section 15a of the Interstate Commerce Act. This is in effect to repeal Section 15a, and is an improper interpretation of the Resolution. If the Resolution authorizes the Commission to reduce a reasonable rate where the carriers are not earning a fair return, it also requires that other rates be adjusted simultaneously so that the carriers' revenue, already inadequate, will not be impaired further.

Assignment of Error No. XLII (R. 122). See also Assignments of Error No. XXIX (R. 118) and Nos. XLI and XLV (R. 122, 123).

3. The Commission erroneously construed the provision of the Resolution respecting "freedom of movement by common carriers of the products of agriculture affected by that depression" to mean that notwithstanding a long, steady and "enormous increase in the tonnage of such fruits" moving in interstate commerce, freedom of movement did not exist unless the shippers were making a profit.

Assignment of Error No. XXV (R. 116). See also Assignments of Error Nos. XXIV (R. 116) and XXXVI (R. 129).

4. The Commission erroneously construed the Resolution as authorizing it to find without substantial

evidence that the existing rate was unreasonable, and that the new rate was the lowest possible lawful rate, and further misconstrued the Resolution as placing upon the carriers the burden of proving that the old rate was the lowest possible lawful rate and that the new rate was lower than the lowest possible lawful rate. The order is arbitrary and invalid since the Resolution does not authorize the Commission to act without substantial evidence and does not alter the existing rule requiring the complainant to bear the burden of proof.

Assignments of Error Nos. XLVII and XLVIII (R. 124).

5. The Commission misconstrued the Resolution in that it held that a rate which yielded the carrier an amount but slightly above operating expenses was a lawful rate. The Interstate Commerce Act and the Constitution require that each rate shall yield to the carriers all proper costs and a substantial profit.

Assignment of Error No. XXXIII (R. 119). See also Assignments of Error Nos. XXXIV and XXXVII (R. 120, 121).

6. The Commission misconstrued the Resolution in that it applied it in an isolated proceeding involving a rate on a particular commodity from a single state, while the Resolution is intended to be applied only in a general investigation into the general rate structure of the country.

Assignment of Error No. XVIII (R. 114). See also Assignments of Error Nos. XVII and XIX (R. 114).

7. The Commission, in construing the Resolution as authorizing it to lower rates on deciduous fruits because the industry is in a depressed condition, has adopted a new and revolutionary policy in rate making, which is not justified by the provisions of the Resolution, and violates the settled rule of statutory construction that a statute will not be construed to bring about a complete revolution in legislative policy unless it contains clear and definite language demonstrating an intention to effect such result.

Assignment of Error No. XVI (R. 114).

8. The Resolution should, if possible, be interpreted in such a manner as will avoid doubts as to its constitutionality. If construed as authorizing and directing lower rates than would otherwise be prescribed solely because of a depression in a given industry and the inability of shippers to conduct their business at a profit, as was done by the Commission in this case, it would be unconstitutional; (1) as a deprivation of the use of private property transcending the power to regulate interstate commerce; and (2) as being a regulation of industry and not a regulation of commerce.

Assignment of Error No. XLIX (R. 124). See also Assignments of Error Nos. VIII (R. 111), XIII and XV (R. 113), XXXVIII and XL (R. 121), XLVI (R. 123) and LII (R. 125).

9. The rate fixed is confiscatory and violates the Act and the Constitution. The Commission intended to fix a rate that would not yield a substantial profit

and did in fact fix a rate which does not cover the carriers' costs or yield a substantial return.

Assignment of Error No. II (R. 110). See also Assignments of Error Nos. III, IV, V and VI (R. 110) and XXI and XXII (R. 115).

ARGUMENT.

The order is based upon the Hoch-Smith Resolution.

The order of the Commission reducing the rates followed its written report in which it stated the issues, discussed the law applicable, reviewed the evidence and made findings of fact. The report is referred to in, and made a part of, the order, and is therefore available in determining the foundation of the order, the facts upon which the Commission acted and based its decision, and the interpretation which it placed upon the law which it considered applicable.

An examination of the Report (R. 16) and the Report on Further Consideration (R. 65) makes clear that the order is founded on the Hoch-Smith Resolution, and that the finding in the report (R. 59)——

> "That the rate of $1.73 * * * is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.60; * * * and that such rates are the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and are necessary to promote the freedom of movement by defendants of the specified products of agriculture, now affected by existing depression in agriculture."

is not based, and was not intended by the Commission to be based upon the provisions of Section 1 of the Interstate Commerce Act, which require that rates be just and reasonable, but is based upon a supposed mandate contained in the Resolution:

> "In view of the existing depression in agriculture, the commission is hereby directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

The proceeding before the Commission was not the ordinary one to enforce the reduction of an "unreasonable" rate, violating Section 1 of the Act. It was intended, and was considered by the Commission, to be one to enforce "the lowest possible lawful rates compatible with the maintenance of adequate transportation service", enjoined by the Resolution, irrespective of whether the existing rate was reasonable or not. It is submitted therefore that the statement that the existing rate was unreasonable should not be considered as an independent finding that the rate was unreasonable but only as a finding that the old rate was in excess of "the lowest possible lawful rate" enjoined by the Resolution as interpreted by the Commission.

1. Complainant relied upon the Hoch-Smith Resolution.

After the formal allegations in paragraphs I to IV as to the corporate existence of the defendants and

reference to the tariffs containing the rates attacked, every paragraph of the complaint specifically refers to the Resolution (R. 145, 146). Paragraph VIII (R. 146) summarizes the complainant's allegations and charges that the rates then in effect were:

> "(1) unjust and unreasonable, in violation of Section 1 of the Interstate Commerce Act, as amended, and
>
> (2) unduly and unreasonably prejudicial, in violation of Section 3 of said Act, and
>
> (3) higher than the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and upon an unjust and unreasonable basis with relation to other rates, in violation of the joint resolution of Congress (S. J. Res. 107) commonly known and designated as the Hoch-Smith Resolution."

It will be noted that whenever the Resolution is referred to in the complaint before the Commission it is referred to in the conjunctive with the allegation that the rates are unreasonable. It was patently invoked by complainant before the Commission as affording a ground for relief independent of that given by the Interstate Commerce Act.

In paragraph IX (R. 146-7) complainant states that it brings its complaint "at this time to the end that relief may expeditiously be afforded in pursuance of said resolution". The concluding paragraph X, (R. 147) requests a departure from the Commission's usual procedure so that "final submission and disposition of said issues be accomplished at the earliest practicable date", and the prayer (R. 148) asks an order requiring defendants to "cease and desist from

the aforesaid violation of said Act and of said Resolution", and asks that they be required to establish rates that will "promote freedom of movement of said fruits at the lowest possible lawful rates".

The complaint was filed with the Commission on December 20, 1926, less than ten months after the full Commission had denied a petition for reconsideration in the earlier case where the Commission found the identical rates (R. 317) were "not unreasonable or unduly prejudicial as alleged" (R. 18).

The report of the Commission in its opening paragraph states that "the complaint also alleges that these rates are higher than the lowest possible lawful rates compatible with the maintenance of adequate transportation service and that they are on an unjust and unreasonable basis with relation to other rates, in violation of the so-called Hoch-Smith Resolution" (R. 17). It refers to the resolution as being "*primarily* relied upon in the instant case" (R. 18).

2. The evidence was directed to the Hoch-Smith Resolution.

The evidence introduced before the Commission was directed to the issues suggested by the Resolution. The report of the Commission summarizes this evidence. It points out that the complainant developed at length the trend of agriculture in California, showing that during the past thirty years much land formerly used for other purposes had been diverted to the growing of fruits and vegetables and that, should the growing of deciduous fruits become unprofitable, much of the land would go back to its native state (R. 21).

It is pointed out further that the prices of deciduous fruits had decreased so that transportation charges had become an important item of expense, and "in complainant's view the markets must be brought nearer by means of rate reductions" (R. 22). The farm values for deciduous fruits over a period of years are then reviewed and the Commission finds, "There has been since 1921 a distinct downward trend in the price levels of deciduous fruits in contrast with the upward trend of prices in the citrus-fruit industry, and in contrast with the comparative stability of the vegetable prices" (R. 22). This evidence and these findings are solely responsive to the Resolution. The Commission discussed the showing with reference to the lower prices received for deciduous fruit and states:

> "These prices are shown to us in compliance with the terms of the Hoch-Smith resolution, and to meet the statement in the prior report of our division, that 'the record herein does not show the comparative levels in market value of the various commodities over a reasonable period of years'." (R. 23)

The Commission devotes much attention to the prices received by the shippers and to the condition of the industry. It finds that "While undoubtedly overproduction and distributing practices are factors in the situation, the *essential* fact still remains that the industry is in serious financial straits" (R. 25) and that "complainant has established that this industry, for the past five years, has been undergoing a period of deflation and depression, and that the

years 1925 and 1926 were more unfavorable than the years preceding". It states, "In complainant's view the existing depression in California deciduous-fruit industry is precisely such as the Hoch-Smith resolution was designed to assist" (R. 25).

3. The Commission considered the evidence and issues from the standpoint of the Hoch-Smith Resolution.

The Commission distinguishes other cases before it, which had been cited in support of the carriers' contention that the rates were reasonable, by saying that "Moreover, the case was decided prior to the passage of the Hoch-Smith Resolution" (R. 41), and that "They would not necessarily constitute precedents against the granting of relief if the same rates were assailed with an adequate showing of changed and different conditions of fact, or in the basic law applicable, and do not preclude our conclusion on this record" (R. 41). The statement respecting a change "in the basic law applicable" is indicative of the Commission's view that the Resolution constituted such a change.

The contention of the carriers that a comparison with the rates on California citrus fruits which the Commission considered "at least not too high" (R. 42) showed that the deciduous fruit rates were reasonable and thus could not be reduced, was dismissed by the Commission with the statement, "But it does not follow that the earnings on citrus-fruit traffic will prevent any readjustment of the deciduous-fruit rates if present rates on the latter are not the lowest possible lawful rates compatible with the maintenance

of adequate transportation service. Under the Hoch-Smith resolution the relative prosperity of an industry over a period of years may be considered as well as its relative adversity" (R. 42).

The Commission discusses at length the meaning of the expression, "freedom of movement", as used in the Resolution. The contention of the carriers, "that the charges for transportation have nothing to do with the existing economic conditions in the deciduous fruit industry" (R. 48), and that the rapid increase in the quantities shipped indicates that there is "now entire freedom of movement" is contrasted with the view of the shippers that freedom of movement, "as used in the Hoch-Smith Resolution means more than the hauling of an unprecedented volume of traffic". The Commission finds that "the record establishes that producers are sustaining serious financial loss, that their indebtedness is increasing, that they are finding it difficult to meet taxes, that banks are foreclosing or assuming the management of properties, and that land values have been entirely deflated. Under such conditions complainant contends that freedom of movement does not exist" (R. 48).

The Commission considered the effect of the proposed reduction on the industry and found that, "It is impossible to prophesy with assurance what result would flow from a reduction in rates" (R. 49), but that, "Since practically all deciduous fruits are sold on a delivered basis, complainant claims that a reduction in rates will prove of direct benefit to the producer" (R. 49). It also found, "Assuming that

the reduced rate would not be reflected in reduced selling prices, the reduction here sought * * * would afford substantial relief to the growers, who bear probably the major portion of the charges directly or indirectly, and would mean the difference between a loss and a small profit to many of them" (R. 49). It is reasonable to conclude that the Commission proceeded to make its order upon this assumption.

Much space is devoted to a discussion of the evidence as to the condition of the carriers and their relative prosperity (R. 49-53), upon which the Commission apparently based its finding that the rates requested would be "compatible with the maintenance of adequate transportation service" as required by the Resolution (R. 56).

4. The Commission based its report and order on the Hoch-Smith Resolution.

After describing the parties to the proceeding and the nature of the traffic involved, the report proceeds at once to discuss the economic showing made by complainant "in order that the present situation of the deciduous fruit industry might be viewed in its proper perspective" (R. 21). It discusses the evidence as to the economic condition of the fruit industry and its causes and says,

> "While undoubtedly overproduction and distributing practices are factors in the situation the *essential* fact still remains that the industry is in serious financial straits." (R. 25)

The Commission finds that

> "Complainant has established that this industry, for the past five years, has been undergoing a period of deflation and depression" (R. 25)

and summarizes the divergent views of the complainant and defendants as follows (R. 25):

> "In complainant's view the existing depression in the California deciduous-fruit industry is precisely such as the Hoch-Smith resolution was designed to assist. It contends that a rate reduction will tend to foster and preserve that industry and that this result will be in the interest of a natural and proper development of the country as a whole. Defendants, on the other hand, claim that if they have justified their present rates under sections 1 and 3 of the interstate commerce act, nothing either in the Hoch-Smith resolution, or developed of record in the instant case, will provide lawful warrant for us to reduce such rates."

After thus setting forth the contentions of the parties as to the proper interpretation and application of the Resolution, the Commission proceeds itself to discuss and interpret the Resolution. This it does in the following language (R. 26):

> "In two recent cases we have had occasion to discuss the meaning and intent of the Hoch-Smith resolution. In *Grain and Grain Products,* 122 I. C. C. 235, 264, we said:
>
> 'As aforesaid, the intent of the resolution is that products of agriculture affected by depression shall move at the "lowest possible lawful rates compatible with the maintenance of adequate transportation service." It sets no new standard of lawfulness, but provides, in effect, that to the

extent that there are flexible limits to our discretion, we shall require the maintenance of the lowest rates falling within those flexible limits. Rates that may lawfully be required must in principle be high enough to cover all the cost that may fairly be allocated to the service plus at least some margin of profit. *Northern Pacific Ry. v. North Dakota,* 236 U. S. 585; *Norfolk & Western Ry. v. West Virginia,* 236 U. S. 605. But it has always been recognized that the burden of transportation may reasonably be adjusted with some regard to the value of the service, in other words, that the higher grade, more valuable commodities may be required to pay a greater margin of profit than those that are of lower grade and less valuable. The substance of the provision of the resolution quoted above is that agricultural products affected by depression shall in this respect be included in the class of most favored commodities, to such extent, at least, as may be "compatible with the maintenance of adequate transportation service." '

"Subsequently, in connection with similar language in *American Live Stock Asso. v. A. T. & S. F.,* 122 I. C. C. 609, 617, we further said:

'In the past we have had occasion to consider at times what may be called "out-of-pocket" cost, but while it has been contended that the carriers might voluntarily, in certain situations, establish rates covering only such cost, it has never been seriously contended that we could lawfully require this to be done. Rates that we may lawfully require must in principle be high enough to cover all the cost that may be fairly allocated to the service plus at least some margin of profit. * * * We say "in principle", because only rarely is definite information available as to such cost, and in practice rates must often be fixed largely by

comparison with other rates. Of course, the other sections of the interstate commerce act must also be borne in mind in determining the lowest lawful rates in a particular situation.'

"The resolution is in effect a direction to us to give agricultural commodities affected by depression the lowest rates that it is possible to give without running counter to the provisions of the interstate commerce act and the carriers' rights under the Constitution. Section 1 of the act requires that all rates shall be just and reasonable. What is a reasonable rate? It may be said to be somewhere between the minimum charge that can be made for the service and permit the carrier to live, and the maximum charge that can be borne by the shipper. In the *Western Rate Advance Case,* 20 I. C. C. 307, pages 347, 348, we said:

'What is the reasonable rate that shall be charged to the shipper? The legislature may not make rates so as to confiscate the carrier's property. The carrier, on the other hand, may not make rates which are unjust to those who by economic necessity are compelled to employ its services. Here, then, we have the minimum of legislative power and the maximum of the carrier's power. Between these lies a zone, indefinite and variable. Without question the carrier will tend toward the maximum, while governmental authority will be inclined—in fact has been created—to repress its upward tendency. One moves inevitably upward to the highest rate which the traffic will bear; the other attempts to discover some relation between charge for service and cost of service.'

"Both the commission and the courts have repeatedly referred to a flexible limit of judgment in reaching a conclusion as to the reasonableness of a rate or a schedule of rates. Otherwise stated,

there is a zone of reasonableness within which any rate is just and reasonable to the carrier as well as just, fair, and reasonable to the shipper that utilizes the carrier's services.

"We again conclude that 'the lowest possible lawful rates' which we may prescribe under the resolution on any given agricultural traffic as to which depression has been shown must be somewhere within the zone of reasonableness permitted by the flexible limits of discretion reposed in us, and that such rates must be put as near the lowest limit or level of that zone as is compatible with the maintenance of adequate transportation service."

This, viewed in the light of the other statements in the report, indicates with considerable exactness just what the Commission considered it was under the duty to do in applying the Resolution, and makes clear also that the Commission based its order solely upon what it deemed to be the proper interpretation and application of the Resolution.

This discussion shows that the Commission considered that the Resolution imposed upon it the duty to fix rates for the carriage of agricultural products suffering from depression at the lowest limit or level within what it called "the zone of reasonableness permitted by the flexible limits of discretion reposed in" it, and "as near the lowest limit or level of that zone as is compatible with the maintenance of adequate transportation service" (R. 28). The Commission deemed itself under the duty to reduce a rate on agricultural products suffering from depression, if that rate, even though reasonable, was higher than

the "lowest possible lawful rate", which, as the Commission later stated, was a rate slightly in excess of operating expenses (R. 67).

As the order was based upon the supposed mandate of the Resolution, the finding that the old rate was "unreasonable" was not a finding that the old rate was unreasonable, measured by the standards of the Interstate Commerce Act, but only that it was in excess of the "lowest possible lawful rate" enjoined by the Resolution. This is established by the portions of the report already noted and the further statements to which we will now refer.

In the report the Commission finds (R. 56):

> "Complainant has established that the growing of deciduous fruits is one of the great basic industries of California, and that this industry for the past five years has undergone a period of deflation and depression. Its economic situation is such that it clearly comes within the terms of the Hoch-Smith resolution as entitled to the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

This language is solely responsive to the Resolution.

The Commission further finds (R. 56):

> "While all the defendants who handle the bulk of the deciduous fruit traffic have not as yet made the fair return, their present financial condition is relatively strong. It seems clear that the reduction requested, if granted, would not affect the maintenance of adequate transportation service."

This is intended to be responsive to another of the requirements of the Resolution, namely, that the rate

to be fixed shall be "compatible with the maintenance of adequate transportation service".

But any doubt that might exist on the question would seem to be dispelled by the Commission's own statement of the issue in the case (R. 56):

> "The primary issue to be determined, therefore, is whether the $1.73 rate assailed approaches the lowest limit or level of the zone of reasonableness permitted by the flexible limit of discretion reposed in us."

This is the issue which the Commission itself stated was the "primary issue". It is the issue which the Commission decided. It did not decide or consider any other issue. As framed by the Commission, the issue is not whether the existing rate is reasonable, but is "whether the $1.73 rate assailed approaches the lowest limit or level of the zone of reasonableness permitted by the flexible limit of discretion reposed in us"; whether the existing rate is the "lowest possible lawful rate", defined by the Commission to be, in principle, a rate yielding at least some margin of profit and, in practice, slightly in excess of operating expenses.

In its endeavor to justify the reversal of its earlier decision finding these rates not unreasonable, rendered less than two years before, in a proceeding between the same parties, the Commission summarized the changes in conditions which had occurred as follows (R. 57):

> "1. The Hoch-Smith resolution was approved subsequent to the presentation of the prior case.
> 2. The depression in the deciduous fruit industry has continued unabated for a further

period of three years and conditions in 1926 were worse than in 1923. In the former decision our division found that the record did not justify the conclusion that the unfavorable financial conditions were likely to continue.

3. The present economic showing is fully responsive to the terms of the resolution. In the prior case the comparative levels in market values over a reasonable period of years were not shown.

4. Complainant offers to submit the deciduous-fruit industry to an increase in the carload minimum on grapes from 26,000 pounds to 30,000 pounds.

5. There has been a further increase in the volume of movement from a total of 69,777 cars in 1923 to 86,795 cars in 1925 and 78,803 cars in 1926.

6. The financial condition of the carriers principally concerned has further improved.

7. Complainant has submitted a more comprehensive rate showing.

8. The average weight of the paying load of deciduous fruit has dropped from 31,460 pounds in 1922 to 28,306 pounds in 1926.

9. There has been an increase in the weighted-average haul shown as 2,965 miles for grapes and 2,909 miles for all deciduous fruits except apples, in the prior case 3,000 miles for grapes and 2,970 miles for all deciduous fruits except apples in 1926. Otherwise stated, in 1926, there was 61 miles of additional service for each ton of fruit handled."

Of these differences the first three, as well as the sixth, exclusively relate to the Resolution. The fourth and fifth which superficially favor complainant are balanced by the eighth and ninth which favor the car-

riers. The seventh of itself is inconclusive (*Louisville & Nashville R. Co. v. United States,* 238 U. S. 1), so it is apparent that the controlling element of the case is the Resolution.

The ultimate finding of the Commission is on the primary issue as framed by the Commission. That finding is as follows (R. 58):

> "Considering the relative rates on and earnings of the deciduous fruit traffic in the light of the condition of the industry and of the service performed by the carriers, and giving due weight to the cost study presented by defendants, we are of the view that the present rates are in excess of the lowest possible lawful rates as herein defined."

This finding falls squarely within the Resolution. The reference to "the lowest possible lawful rates as herein defined" is clearly an allusion to the Commission's definition of such a rate as one which in principle must be high enough to cover the cost plus at least some margin of profit (R. 26).

The conclusion of the Commission (R. 59):

> "We are of the opinion and find upon a consideration of the whole record that the rate of $1.73 as applied to the transcontinental shipment of deciduous fruits from California to Groups A to M, inclusive, except Group J is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.60; and that the rate of $1.62 currently applicable to Group J points is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.50 and that such rates are the lowest possible lawful rates compatible with the maintenance of ade-

> quate transportation service, and are necessary to promote the freedom of movement by defendants of the specified products of agriculture, now affected by existing depression in agriculture"

is expressed in almost the exact language of the Resolution. The expression that the existing rate is "unreasonable" is obviously a finding that it is unreasonable judged by the standards of the Resolution, as interpreted by the Commission. It is a finding that the rate then prevailing is in excess of the "lowest possible lawful rate", and is clearly not a finding that the rate is unreasonable measured by the ordinary standards prescribed by Section 1 of the Act. That this interpretation of the finding is correct is supported by the separate concurring opinions of Commissioners Woodlock, Taylor and Eastman, and the dissenting opinion of Commissioner McManamy; it is also supported by the Report on Further Consideration.

The report states that four of the eleven Commissioners did not participate in the disposition of the case (R. 65). This means that seven did participate, and the affirmative vote of four was necessary to the order. Commissioner McManamy dissented. Commissioner Woodlock, joined by Commissioner Taylor filed a separate concurring opinion, and Commissioner Eastman filed a separate concurring opinion. Two other commissioners therefore joined with Commissioner Aitchison in the principal report. The vote of one of the Commissioners filing a separate concurring opinion was necessary to the validity of the order.

Commissioner Eastman, in his concurring opinion, states (R. 59):

> "While it is by no means clear that the rates in issue are unreasonable and ought to be reduced, complainant is entitled under the Hoch-Smith resolution to the benefit of the doubt, and I can for that reason accept the results reached."

We will later point out that Commissioner Eastman changed from an assenting to a dissenting opinion in the report on further consideration.

Commissioner Woodlock (with whom Commissioner Taylor concurred) in his separate concurring opinion said (R. 60):

> "The Hoch-Smith resolution (which governs the disposition of this case) contains other injunctions addressed to us besides that which requires the lowest possible lawful rate on products of agriculture suffering from depression."

Commissioner McManamy, dissenting, said (R. 63):

> "The majority report as well as the concurring expressions show that the decision is predicated upon the Hoch-Smith Resolution."

It is permissible to refer to separate concurring or dissenting opinions in interpreting a report of the Commission. *Southern Pacific Co. v. Interstate Commerce Commission,* 219 U. S. 433; *St. Louis & O'Fallon Ry. Co. v. United States,* (May 20, 1929) 73 L. ed. 457.

In the Report on Further Consideration, the Commission, after admitting an error of $20.79 per car in its previous computation of the cost of carriage, and,

having already prescribed what it considered the lowest possible lawful rates, concludes (R. 68):

> "On the whole record, we adhere to our former finding that the present rates are unreasonable and we are not convinced that the rates prescribed are below what are necessary to afford complainants the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

It is apparent from the entire report that the conclusion of the Commission was directed solely to the issue framed and specifically stated by the Commission (R. 56):

> "The primary issue to be determined, therefore, is whether the $1.73 rate assailed approaches the lowest limit or level of the zone of reasonableness permitted by the flexible limit of discretion reposed in us."

The conclusion that the old rates were "unreasonable" reflected merely the following analysis of what it considered were the essential features of the case:

(a) The California deciduous fruit industry is in a state of depression;

(b) Reduced rates are necessary to permit the movement of deciduous fruit freely at a profit to the shipper;

(c) Under such conditions the Resolution requires that rates be fixed at the lowest extremity of the zone of reasonableness;

(d) The existing rates are in excess of the lowest limit of the zone of reasonableness, and

(e) New rates are therefore prescribed which are at the lowest limit of the zone of reasonableness. These rates will afford the carriers a revenue slightly in excess of operating expenses, and although probably of less than average profitableness, will leave the traffic attractive to the carriers (R. 67).

This conclusion is responsive only to the Resolution as construed by the Commission.

5. The old rates are not found to be unreasonable under the Act.

It will no doubt be urged that the expression in the Report "the rate of $1.73 * * * is and for the future will be unreasonable to the extent that it exceeds or will exceed $1.60" is a finding that the rate is unreasonable *per se,* under section 1 of the Act, and without reference to the Resolution. It is submitted that this expression, couched in the usual formal language of the Commission, cannot acquire a meaning never intended by the Commisson by being lifted out of its context and segregated from the remainder of the report. It must be read with the rest of the report and interpreted in the light of the context. The important question is not what the Commission said, but what it did and what power it attempted to exercise. The question here before the court can best be put in the words of Chief Justice White in *Southern Pacific Co. v. Interstate Commerce Commission,* 219 U. S. 433, at page 437.

"When that which is superfluous is put out of view, it will come to pass that every substantial

> controversy which the case presents will be disposed of by determining what was the character of the order made by the Commission; that is to say, what was the power which that body exerted in making the order in question."

No magic or infallibility attaches to the word "unreasonable" contained in the reports of the Commission. The use of this expression does not conclusively determine the nature and character of the order of the Commission or the grounds on which it is based. To answer that question the entire report must be examined and the substance rather than the mere form, the true intent and not the formal symbols used, will determine the nature of the power which the Commission attempted to exert.

In *Southern Pacific Co. v. Interstate Commerce Commission,* supra, the court was reviewing an order of the Commission (14 I. C. C. 61) entered upon a Complaint which charged that an increased rate on lumber "was unreasonable in and of itself and discriminatory". The Commission found "* * * the present rate * * * is unjust and unreasonable". The court concluded that this finding was not to be considered as an independent finding that the rate was in fact unreasonable measured by the statute, saying (219 U. S. at p. 449),

> "While it is true that the opinion of the Commission may contain some sentences which, when segregated from their context, may give some support to the contention that the order was based upon a consideration merely of the intrinsic unreasonableness of the rate which was condemned,

we think when the opinion is considered as a whole, in the light of the condition of the record to which we have referred, it clearly results that it was based upon the belief by the Commission that it had the right, under the law, to protect lumber interests of the Willamette valley from the consequences which it was deemed would arise from a change of the rate, even if that change was from an unreasonably low rate, which had prevailed for some time, to a just and reasonable charge for the service rendered for the future. Manifestly, this was deemed by the Commission to be the power which was being exerted, since Mr. Commissioner Harlan, joined by the Chairman of the Commission, dissented on the ground that the order was an exertion of a power not possessed, to give effect to a supposed equitable estoppel, and no language was inserted in the opinion to indicate to the contrary."

Again, in the *Passenger Scrip Case* (*United States v. New York Central R. R. Co.*, 263 U. S. 603) the court reviewed an order of the Commission requiring the railroads to issue interchangeable scrip tickets at a reduction of 20% from the standard fares. This order was issued by the Commission following the 1922 amendment of Section 22 of the Act, which directed the Commission to require the issuance of such tickets.

In instituting its proceeding of investigation following the passage of the statute the Commission stated in a notice of hearing that evidence was desired upon the following questions:

"* * * (2) What rate or rates shall be established as just and reasonable for each or either form of ticket? * * *" (77 I. C. C. 201).

It further stated

> "The amount of the rate is the most important question before us" (203)

and after concluding that

> "The spirit and apparent theory of the law is that carriers shall be required to sell such a ticket at something less than the standard fare * * *" (209)

made the following finding:

> "We further find that the rates resulting from that reduction will be just and reasonable for this class of travel * * *" (210).

In holding the order void Mr. Justice Holmes, speaking for the entire court, said (263 U. S. 609):

> "It is further alleged in the bill that the conclusion stated by the Commission, that the reduced rates established by it for scrip coupon tickets will be just and reasonable for that class of travel, is contrary to the specific facts found by the Commission, and is not to be taken as an independent finding of fact, but only as a conclusion or ruling reached by it upon a misinterpretation of the law."

Upon review of the entire report the court found that the Commission had not attempted to reach an independent conclusion on the evidence before it as to what rates would be just and reasonable, but that its action was based wholly upon the supposed wish of Congress that these tickets should be sold at reduced rates, saying (p. 611):

> "It seems to us plain that the Commission was not prepared to make its order on independent grounds apart from the deference naturally paid to the supposed wishes of Congress."

In this case also it is plain that the expression that the existing rates were unreasonable was not based on independent grounds but solely upon the supposed mandate of the Resolution.

In *Anchor Coal Co. v. United States,* 25 Fed. (2d) 462, the order of the Commission made in *Lake Cargo Coal,* 139 I. C. C. 367, was under review. In that case the report had been amended to include a finding that the rates were "unjust and unreasonable" (25 Fed. (2d) 470). But the special court says (p. 464):

> "To understand, however, exactly what the power is which the Commission has assumed to exercise, it is necessary that we go behind its merely formal conclusions that rates are reasonable or unreasonable, and ascertain exactly what it is that it has done, and upon what facts and upon the application of what principles it has arrived at its conclusions (citing cases). And, in the performance of this duty, it is necessary that we analyze not only the report of the Commission accompanying the order whose enforcement we are asked to enjoin, but also the reports made in 1925 and 1927 with regard to the reductions of rates from the northern field, in the latter of which the differential was increased from 25 to 45 cents."

The court there felt that a complete inquiry into the power which the Commission assumed to exercise required an examination of the group of decisions making up the whole story. Here we feel it is equally appropriate, in order to ascertain exactly what the Commission was doing, to examine not only its two reports in docket No. 19130 (129 I. C. C. 25; 132 I. C. C. 582) but also its report in docket 15137 (100 I. C. C. 79).

In *Atchison, T. & S. F. Ry. Co. v. Interstate Commerce Commission*, 190 Fed. 591, the order under review was found to be based on commercial conditions and beyond the jurisdiction of the Commission, notwithstanding a finding (19 I. C. C. 148) that "* * * upon full consideration we are of the opinion that the present lemon rate * * * is unreasonable."

Other cases laying down the same principle are:

Texas and Pacific Ry. Co. v. Interstate Commerce Commission, 162 U. S. 197;

Atlantic Coast Line R. Co. v. Interstate Commerce Commission, 194 Fed. 449.

In support of the contention that the statement (R. 59) "We are of the opinion and find upon a consideration of the whole record that the rate of $1.73 * * * is and for the future will be unreasonable to the extent that it exceeds or will exceed $1.60" is a finding of unreasonableness of the old rates charged, solely by the standards of the act, Appellees will no doubt point to the mass of evidence introduced before the Commission, which was of a kind ordinarily considered in rate cases. The bulk of this evidence may be contrasted to that dealing with strictly commercial conditions, the number of pages of testimony and the exhibits devoted to each kind of evidence may be counted as well as the pages of the report devoted to a discussion thereof, and the contention made that this was but a conventional rate case; that the Commission had ample evidence before it upon which to base a finding that the old rates were unreasonable under Section 1 of the Act, and that the new rates were prescribed as reasonable rates for the future.

The nature of this evidence is discussed in more detail in connection with the section of this brief dealing with the errors of the Commission in imposing upon the carriers the burden of proof and acting without substantial evidence to support its finding that the rates prescribed were the lowest possible lawful rates (infra pp. 108-122).

The quantity of evidence introduced does not prove that the Commission proceeded in accordance with law, or that its order is valid, or that such evidence was deemed by Commission as sufficient to justify a finding that the rates were unreasonable measured by the standard of Section 1.

What use did the Commission make of the evidence? For what purpose did it weigh it? What were its conclusions based upon it? The record is clear on these points.

The Commission considered the evidence only for the purpose of determining whether the existing rate was "the lowest possible lawful rate" under the Resolution, and for no other purpose. This is clear from the statement in the Report (R. 56):

> "The primary issue to be determined, therefore, is whether the $1.73 rate assailed approaches the lowest limit or level of the zone of reasonableness permitted by the flexible limit of discretion reposed in us",

and by the ultimate finding (R. 58):

> "* * * we are of the view that the present rates are in excess of the lowest possible lawful rates as herein defined."

If the primary issue, in the view of the Commission, was whether the rates were "the lowest possible lawful rates" and not whether they were reasonable or unreasonable, it is obvious that the evidence was considered and viewed with the single object of reaching a determination of that issue. It is idle to speculate as to what the view of the Commission would have been had it properly pursued the law and considered the evidence from the standpoint of the reasonableness of the existing rate. That issue was not considered by the Commission, and the fact that there was evidence that might have been used for this purpose may point to a lost opportunity, but it certainly is no proof that it was used for that purpose.

To contend that there was an abundance of evidence upon which the Commission could have found the rate unreasonable under Section 1 is futile. The fact is that the Commission did not consider that to be the issue, and confined itself to the single issue as to whether the existing rate was in excess of "the lowest possible lawful rate". What it would have done had it correctly interpreted and applied the law, is a matter of speculation, into the realms of which this court cannot enter for it may not substitute its judgment or discretion for that of the Commission. The order is void because the Commission applied the wrong legal measure.

6. Subsequent references to the Report show that it was based on the Resolution.

The Commission itself has frequently referred to this case (129 I. C. C. 25; 132 I. C. C. 582) as being one wherein the Resolution was applied.

In its 41st Annual Report to Congress, at page 67, it said "In three important cases during the past year we have had occasion to construe the Hoch-Smith resolution * * *" and quoted from its Report (129 I. C. C. 25, 32).

In *Boston Wool Trade Association v. Apache Ry. Co.*, 144 I. C. C. 111, 114, it is said:

> "To this mandate of Congress we have in several cases given such effect as we could in respect of important commodities," citing the report in this case.

In *Chautauqua & Erie Grape Growers' Assn. v. Erie R. R. Co.*, 146 I. C. C. 403, 410, it is said:

> "In both the *Georgia case* and the *California case* we specifically stated that the rates were prescribed in accordance with the provisions of the Hoch-Smith resolution."

The decision herein is likewise cited by the Commission, as being a case wherein the Resolution was applied, in

Georgia Peach Growers Exch. v. A. G. S. R. Co., 139 I. C. C. 143; 148 I. C. C. 755;

Lake Cargo Coal, 139 I. C. C. 367, 394.

Members of the Commission during the course of various congressional inquiries have referred to this proceeding. When hearings were being held by the

House Committee on the Appropriation Bill for 1930, Commissioner Eastman referred to this case (Record of Hearing, pp. 182-183).

"Mr. EASTMAN: In the first place, I think that I ought to say that the Hoch-Smith Resolution has had some positive results in addition to the hearings in these investigations.

Mr. SUMMERS: In the southeastern part of the country, and also in the southwestern part of the United States.

Mr. EASTMAN: And also on the Pacific Coast, in the reduction of rates on deciduous fruits, for example. The carriers, by the way, carried that case to the courts, and they are attempting to secure an interpretation of the Hoch-Smith Resolution through the medium of that case, but those reduced rates have gone into effect."

7. Summary.

The complaint was based upon the Resolution. The Commission construed the complaint as relying principally upon the Resolution. The evidence was directed to the issues under the Resolution. The report shows on its face that it was based on the Resolution and the report has, since its rendition, frequently been referred to as being an application of the Resolution. In the words of counsel for the United States at the hearing in the District Court "The Hoch-Smith resolution is in the case from beginning to end".

The true meaning and proper interpretation of the Resolution.

In view of the interpretation placed upon the Resolution by the Commission and its application in this proceeding, it is important to determine just what the

Resolution directs and the true meaning of the enactment.

In aid of the interpretation of ambiguous language in a statute the reports of Congressional Committees and the statements of those in charge of the bill may be considered and the circumstances leading up to the enactment may likewise be considered in confirmation of the meaning of the words used.

United States v. Missouri Pacific R. R. Co., (January 2, 1929) 73 L. ed. 136, 139.

Legislative history of the Hoch-Smith Resolution.

On March 28, 1924, Senator Smith introduced Senate Joint Resolution No. 107, which in a single paragraph declared agriculture to be "the basic industry of the country" and directed the Commission "to effect such changes in the general rate structure of the country as will promote the freedom of movement" of such products *"at the lowest possible rates"*. It was referred to the Committee on Interstate Commerce and reported favorably on the same day with amendments. Before consideration by the Senate however it was again amended, Senator Cummins collaborating in the preparation of the amended form of the Resolution. As so amended and passed by the Senate it consisted of two paragraphs, the first of which declared the true policy of rate making to be that conditions existing in the various industries should be considered, so far as lawfully possible, to the end that commodities may freely move "with fair profit to the producer and sold at a reasonable price

to the consumer". The second paragraph of the Resolution as passed by the Senate declared that agriculture was the basic industry of the country and that it was the policy of Congress to foster that industry. It directed such lawful changes in the rate structure as will promote the freedom of movement of such products at the lowest possible lawful rates compatible with the maintenance of adequate transportation service (65 Cong. Rec. 8336).

The direction contained in the original form of the Resolution that the rates to be made for agricultural products be "the lowest possible rates" was changed to the "lowest possible *lawful* rates compatible with the maintenance of adequate transportation service".

During the consideration of this Bill by the Senate, Senator Smith and Senator Cummins, the authors of the amended resolution, explained its meaning, and in this connection Senator Smith stated as follows:

> "Permit me to state to the Senator that really there is no new proposition involved in it. It is simply a direction to the Interstate Commerce Commission that whenever there is a depression in any of the basic industries of the United States, as there has been in agriculture, the commission should take cognizance thereof, and regulate the rates so as to facilitate the movement of the products of that industry." (65 Cong. Rec. 8336).

In response to a question regarding the meaning of the resolution, Senator Cummins, said:

> "Undoubtedly the Interstate Commerce Commission has complete and adequate power to reduce freight rates in exact accordance with the

declaration made by this Joint Resolution, and while the Interstate Commerce Commission has, since the 1st of September, 1920, reduced rates upon agricultural products very markedly, yet I think it is wise again to call the attention of the Commission and of the country to the principle which should underlie rate making in basic commodities." (65 Cong. Rec., 8337.)

Prior to the introduction of this resolution in the Senate, Representative Hoch, on December 17, 1923, had introduced in the House of Representatives a joint resolution known as House Joint Resolution No. 94 (65 Cong. Rec., 345-6), directing the Interstate Commerce Commission to take action relative to adjustments in the railroad freight structure and the fixing of rates and charges. On January 16, 1924, Representative Hoch introduced a similar resolution known as House Joint Resolution No. 141 (65 Cong. Rec., 1070-1), directing the Interstate Commerce Commission to take action relative to adjustments in the rate structure of common carriers. The House Committee on Interstate and Foreign Commerce reported favorably on this resolution on May 13, 1924 (65 Cong. Rec., 8496-7). Senate Joint Resolution No. 107 having been passed by the Senate on May 12, 1924, was referred to the House Committee on Interstate and Foreign Commerce. On May 27, 1924, this Committee reported Senate Joint Resolution No. 107 to the House with amendments (65 Cong. Rec., 9675).

The Resolution as so reported contained two paragraphs. The first stated the substance of House Joint

Resolution No. 141 and directed a general investigation of the rate structure in the same language as contained in the second paragraph of the Resolution as enacted. The second paragraph (taken from Senate Joint Resolution No. 107) directed the Commission to effect with the least practicable delay such "reasonable and lawful changes" in the rate structure as would promote freedom of movement by common carriers of the products of agriculture affected by depression "at the lowest possible *reasonable and lawful rates* compatible with the maintenance of adequate transportation service."

The second paragraph was referred to in the report of the Committee in these words:

> "This direction to the Commission involves no purpose to do injury to the carriers, but expresses the will of Congress that in this time of agricultural depression the basic industry of agriculture shall be given with the very least possible delay every consideration in the matter of rates consistent with the maintenance of adequate transportation service."

The report then discussed the paragraph dealing with the general investigation of rates as follows:

> "This resolution is based upon the proposition that the present freight structure is out of adjustment, and that certain commodities, particularly agricultural products, are, in general, bearing an unfair proportion of the freight burden.
>
> "The resolution does not propose that Congress enter upon the technical job of rate making, but directs the Interstate Commerce Commission to proceed upon the inquiry and to remove as far

as possible the injustices and maladjustments that now exist. * * *

"The present freight structure, which has grown up piecemeal and is a result of all sorts of local considerations, has long been out of adjustment. This maladjustment has been greatly increased by the flat, horizontal percentage increases in freight rates which have been made in recent years. These flat, horizontal increases were not scientific. The method used was grounded on expediency and the need for prompt action. * * *

"This improper distribution of the freight burden has borne particularly heavily on the products of the farm owing to the price deflation in those products. The present structure does not give proper weight to the question of what the traffic can fairly bear. The cost of the service to the carriers is not the only factor that must be considered but the value of the service to the shipper as well. * * *

"A year ago the United States Chamber of Commerce named a special committee to make a study of this question, and on November 14, 1923, that committee made its report. On that committee were railroad traffic managers and other officials of the carriers and prominent business men of the country. In its report that committee said:

> "'It cannot be claimed that the railroad freight rate structure of the United States has ever been organized on a scientific basis, or that it has ever been systematically revised with the purpose of eliminating disparities. The great economic changes incident to and resulting from the war have created additional disparities resulting from horizontal rate changes, from the dislocation of relative price levels, and from increases in labor costs and terminal expenses which have borne with

greater weight on some classes of traffic than others. This situation renders a readjustment of relative freight rates of great immediate importance.'

"In his message to Congress in December, President Coolidge uttered this terse but comprehensive statement:

"'Competent authorities agree that an entire reorganization of the rate structure for freight is necessary. This should be ordered at once by Congress'." (Report No. 867, House Committee on Interstate and Foreign Commerce, May 27, 1924.)

The resolution as it then existed did not differ substantially from the form ultimately adopted. The real purpose and effect was explained by Representative Hoch in the following language:

"* * * The first part of this resolution proposes a general survey by the Interstate Commerce Commission of the freight structure of the country, and directs that such injustices and inequalities as found existing shall be corrected by the Commission. It also directs the Commission to take into consideration, among other things, the relation in prices of various classes and kinds of commodities as indicated over a reasonable average of years, and also does one or two other things which I will refer to later. * * *

"The first paragraph of this resolution is in exact compliance with that recommendation, and proposes not that Congress shall make rates, for obviously Congress cannot take upon itself that technical duty but directs the Interstate Commerce Commission to enter upon a comprehensive study and survey of the freight structure and to remove disparities and inequalities, as far as pos-

sible, without injuring adequate transportation service.

"* * * The second paragraph of this resolution is taken in substance from the Senate resolution. It makes special reference to agricultural products, including livestock. I want you to notice closely in order that there may be no misapprehension about it. I do not claim that this is any panacea or anything of that sort. It does not direct particular rates upon farm products, although I am firmly convinced that a study will show that those rates in many cases ought to be reduced, but it does call the attention of the Interstate Commerce Commission by the Congress, which has the right to speak to the Commission, which is an agency of the Congress, to the great agricultural depression existing in the country and it says to the Interstate Commerce Commission:

> "'We direct that you shall with the least practicable delay make such changes in the freight rates upon farm products, including livestock, as will as far as possible correct any injustices that may be found to exist and promote the freedom of the movement of these products.'

But, as gentlemen will notice by reading the Resolution, it does not contemplate that there shall be anything ruthless done; in fact, it specifically provides that it shall not interfere with the maintenance of an adequate transportation service. * * *" (65 Cong. Rec., 11019.)

During the debate on the Resolution Representative Shallenberger charged that no new power was given the Commission and that "this legislation is simply a gesture to placate the farmer." He further stated that the only way to relieve the farmer was by

the repeal of section 15a of the Act (65 Cong. Rec., 11020).

Representative Hoch at the close of the debate, summarized the purpose and effect of the Resolution, as follows:

> "The second paragraph is an honest direction to the Commission calling attention to the agricultural depression and directing every possible relief, reasonable and lawful, at the earliest practicable date. * * * But certainly every one knows that there are adjustments that should be made, and this Resolution provides that within reason and within the law wherever they can possibly find any adjustments that will not work injury to adequate transportation service and are in the interests of agriculture, including livestock, they shall make them; and I understand the only objection so far offered, outside of the objections of the gentleman from Alabama, by any one here, is that they are afraid that the Republican Party might possibly get a little credit for the passage of this resolution." (65 Cong. Rec., 11026.)

The Senate and the House having disagreed upon the final form of the Resolution, a Conference Committee was appointed which agreed upon the bill in its final form. As finally passed the Resolution contained three paragraphs. The first paragraph was taken from the Resolution as passed by the Senate, but the Conference Committee and Congress struck out the last clause of the paragraph, which provided that commodities should freely move "with fair profit to the producer and sold at a reasonable price to the consumer".

The second paragraph of the Resolution as reported by the Conference Committee was unchanged from the form in which adopted by the House. The third paragraph contained the substance of the original Senate resolution, as modified in the House, changed only to the extent stated by Representative Hoch, when he said:

> "The only change from the House resolution is in the latter part of the Resolution, where the Commission is directed to make such 'reasonable and lawful changes' in the rates on agricultural products as are consistent with the maintenance of an adequate transportation system. The word 'reasonable' is stricken out, leaving the Commission to fix such 'lawful' rates, and in the judgment of the conferees this makes no substantial change, as they believe that no rates can be fixed that are 'lawful' which are not reasonable, 'reasonable' taking into consideration all of the elements that should be taken into consideration. We have given very careful thought to it, and in our judgment it does not substantially change the law." (65 Cong. Rec., 11246.)

The proper interpretation of the Resolution.

What we believe to be the correct interpretation of the Resolution was given by Senator Glass, before the Senate Committee on Interstate Commerce (Report of Hearings on the confirmation of John J. Esch to be a member of the Commission, pp. 76, 77):

> "There is nothing unconstitutional about the Hoch-Smith resolution. There is really nothing contrary to the statute in the Hoch-Smith resolution. I have not been here, but I assume your attention has been called to the fact that the res-

olution directs this inquiry and the conclusions to be had in accordance with the law. Therefore, the Hoch-Smith resolution did not modify in the remotest way the statute itself. It was a mere expression of the sense of Congress that if at that time, momentarily, any relief could be given to these interests in accordance with law, that Congress would desire it to be done. That is all there is to the Hoch-Smith resolution."

Interpreted as a whole the Resolution is entirely consistent with established principles of law and capable of practical application. Being convinced, as indicated by the reports and debates already quoted, that the rate structure of the country had grown up in a haphazard fashion; that it was unscientific in its construction and in the distribution of the burden of transportation; that it was rigid and did not accommodate itself to the changes which were taking place in industry and which were reflected in transportation; that the horizontal increases and reductions made during the stress and emergency of war and post-war conditions had increased the disparity and that as a result the rate structure contained many injustices and inequalities and, therefore, violations of the existing law, Congress by the Resolution directed its agent, the Interstate Commerce Comm'ssion, substantially as follows:

"Keep in mind that railroad rates should reflect the value of the service as well as cost, and undertake at once a complete investigation of the whole railroad rate structure to see that it conforms to those principles laid down in the Interstate Commerce Act that rates shall be rea-

sonable and uniform in their application, making such changes as you find necessary to remove any injustices or illegalities found to exist, and to make the rate structure conform to industrial conditions as they exist from time to time, and as they are reflected in transportation so that traffic may freely move as economic conditions permit, unhampered by the arbitrary restrictions of illegal rates. If in the course of that investigation you find any such injustices or illegalities existing in the rates on agricultural products now suffering from depression, they should be immediately removed without awaiting the final conclusion of your investigation, as agriculture should not be required to continue paying rates which are illegal or unreasonable and higher than required to maintain an adequate transportation system."

So interpreted the Resolution is a consistent whole, centered around the general investigation therein directed to be undertaken, avoids any possible question as to its constitutionality and is wholly in accord with the letter and spirit of the Interstate Commerce Act, which was obviously in the mind of Congress in its repeated references throughout the Resolution to "lawful changes", "lawful rates" and the consideration of certain matters "insofar as it is legally possible to do so".

"Lawful" as used in the Resolution does not mean "in accordance with the existing law and the Resolution" as though different principles were enunciated in each. Such a view could be entertained only if the Resolution had separately stated a new principle and then directed changes in accordance with law. But the

principles stated in the Resolution were in every instance, in terms qualified by reference to "lawful changes", "lawful rates", "in accordance with law" or "to the extent it is lawfully possible to do so". The declaration of a policy that conditions in industry shall be considered "to the extent it is lawfully possible to do so" can only mean that the policy stated shall apply if, and only to the extent, permitted by pre-existing law. It imports no direction that such policy be pursued in addition to the pre-existing law, to the extent lawfully possible. Such a qualification could refer only to the Constitution and would exist whether expressed or not. To construe the Resolution as contended for by the Commission would distort the plain meaning of the terms used in the enactment, violate cardinal rules of statutory construction, and raise serious constitutional questions which should be avoided if possible.

The reports and debates in Congress fortify our interpretation of the Resolution and show that there was "no new proposition involved" in the first and third paragraphs of the Resolution. (The second paragraph, directing the general investigation of rates is not involved in this connection.) Senator Cummins explained that "Undoubtedly the Interstate Commerce Commission has complete and adequate power to reduce freight rates in exact accordance with the declaration made by this joint resolution".

What was the power of the Commission under the law, with which the Resolution was in exact accord-

ance? It was limited to a consideration of the value of the commodity in relation to other commodities, and excluded any consideration of the profits of the shipper or carrier or the absence thereof. The desire of producers to reach a market, the necessity of such markets to dispose of surplus production, the profitableness of their business or its poverty could not influence the level of rates. Orders of the Commission prescribing rates to equalize fortune or opportunity or to meet the commercial necessities of the shipper are void. As was said by Mr. Justice Holmes in *Interstate Commerce Commission v. Diffenbaugh*, 222 U. S. 42, 46:

> "The law does not attempt to equalize fortune, opportunities or abilities."

Similarly the direction that the lowest possible lawful rates compatible with the maintenance of adequate transportation service be prescribed to the end that agricultural products suffering from depression may move freely in interstate commerce manifested no purpose to change the law or set up any standard in addition to those contained in the Interstate Commerce Act. This paragraph was also explained as being within the existing powers of the Commission. It was paraphrased by Mr. Hoch, in charge of the bill in the House, as follows:

> "We direct that you shall with the least practicable delay make such changes in the freight rates upon farm products, including livestock, as will as far as possible *correct any injustices that may be found to exist* and promote the freedom

of movement of those products." (65 Cong. Rec. 11018.)

A direction to correct injustices, or as expressed in the report of the Committee, to give agriculture "every *consideration* in the matter of rates consistent with the maintenance of adequate transportation service" is not a declaration of a new principle that it be given preferential treatment based wholly on its commercial necessities and regardless of transportation conditions. It can only mean that the existing laws should be applied promptly and effectively. It cannot be implied from this language that Congress intended to vest in the Commission a new power to give preferences to agriculture which the Act specifically prohibited the carriers, the owners of the private property, from creating or maintaining. Much less can it be implied that such preferences should be extended even as between agricultural products, solely on the ground of their relative prosperity or adversity, as was done in this case. Under the existing law, which was not changed, this could not be done.

Under the existing law commercial conditions could be considered by the Commission only in so far as they had a bearing on the transportation conditions by which the reasonableness of rates was to be determined. Under the Resolution, as applied by the Commission, the relationship was wholly reversed as to agricultural products suffering from depression. The Commission applied the Resolution as making commercial conditions the controlling factor, as to

such commodities, and as excluding the transportation conditions which had formerly supplied the evidence upon which it was to exercise the "judgment which belongs to the power to fix rates". The process became automatic and the Commission became a mere auditor, to verify the fact of depression, no matter how caused, and then fix the lowest rates that could be established without violating the carriers' constitutional rights.

Such a revolutionary change could only flow from a clear and express statement of legislative intent to that effect. It is not to be implied by a strained interpretation of a joint resolution, which on its face was addressed solely to the Commission and not to the carriers.

It should be noted that the enactment was a joint resolution approved by the President. While it is true that a joint resolution so approved has the force of law, it is proper to consider the generally recognized difference between an act of Congress and a joint resolution.

> "The difference between an act of congress and a joint resolution is that the former governs all persons under the jurisdiction of the enacting power, while the latter is but a rule for the guidance of the agents and servants of the sovereign. 26 Am. & Eng. Enc. L. 560 and notes."
>
> *S. H. Hawes & Company v Wm. R. Trigg Co.*, (Va.) 65 S. E. 538, 552; 110 Va. 165.

Under the Interstate Commerce Act the carriers have the right to initiate rates. So long as the rates

they initiate are not "unreasonable" or "unjustly discriminatory" or "unduly preferential" or otherwise in contravention of some positive provision of the Act, the Interstate Commerce Commission under the Act is without power to change such rates. It is submitted that the Resolution interpreted according to its plain terms and in the light of its legislative history, and in accordance with the accepted principles of statutory construction, was not intended to and does not change the provisions of the Interstate Commerce Act, but is an admonition to the Interstate Commerce Commission, as the administrative agent of Congress, to enforce the provisions of the Act, and that it gave no power or authority to the Commission to reduce an existing reasonable rate fixed by a carrier.

I. **Errors of the Commission in construing and applying the Resolution.**

A. **The Commission construed the Resolution to require it to reduce an existing rate on agricultural products, notwithstanding that the existing rate was reasonable, and otherwise lawful. This was a misconstruction of the Resolution. The Resolution required that the Commission reduce existing rates on agricultural products only if such rates were unreasonable or discriminatory, or otherwise unlawful as measured by the provisions of the Interstate Commerce Act.**

The Resolution properly construed did not change the law which existed prior to its enactment. It did not prescribe any new or different standard of lawfulness; and it did not authorize the Commission to depart from the standards of rate making which were prescribed in the Interstate Commerce Act. The Commission, pursuing what it considered to be the

intent of Congress that rates on agricultural products suffering from depression should be reduced, proceeded to reduce this rate to a point where in the view of the Commission it would yield to the carriers a return slightly exceeding operating expenses. In so doing it substituted what it considered the wish of the Congress for the requirements of the Resolution. The situation is similar to that in the *Passenger Scrip Case* (*United States v. New York Central R. R. Co.*, 263 U. S. 603, 611), where Mr. Justice Holmes aptly said in speaking of an order of the Commission directing the issue of mileage tickets at a reduced rate, "But we think it erred in reading the wishes that originated the statute as an effective term of the statute that was passed, * * *".

The purpose of those who advocated the Resolution may have been to hold out to the agricultural interests the prospect of decreased rates on the products of the farm. But the Resolution, as finally adopted, directed reductions in the rates on agricultural products only where such reductions could lawfully be made; that is, where the Commission found that such rates were, for some reason, inherently unreasonable, or otherwise in violation of the Interstate Commerce Act. The situation was similar to that in the *Passenger Scrip Case* (supra), where it was said regarding a statute directing the issue of passenger scrip at reasonable rates (610): "Coming as it did from the agitation for this form of reduced fares, the statute naturally enough carried with it more or less mirage of fulfilling the hope that gave it rise, but in

fact it required a determination of what was just and reasonable exactly as in any other case arising under the Interstate Commerce Act." And so here. The Resolution requires the fixing of a just and reasonable rate exactly as in any other case arising under the Interstate Commerce Act and does not authorize the Commission to alter a reasonable rate fixed by a carrier.

The Commission itself, in an earlier proceeding, says of the Resolution, "It sets no new standard of lawfulness * * *."

Grain and Grain Products, 122 I. C. C. 235, 264.

But in the face of all this the Commission proceeds in the present case to state, "We again conclude that 'the lowest possible lawful rate' which we may prescribe *under the resolution* on any given agricultural traffic as to which depression has been shown must be somewhere within the zone of reasonableness permitted by the flexible limits of discretion reposed in us, and that such rates must be put as near the lowest limit or level of that zone as is compatible with the maintenance of adequate transportation service" (R. 28). What this lower level or limit is in this case is apparent from the face of the report. It is a rate which "must *in principle* be high enough to cover all the cost that may fairly be allocated to the service plus at least some margin of profit" (R. 26). It is a rate "slightly above the operating expenses", and "probably of less than average profitableness" (R. 67). It is a rate which the Commission designedly attempted to fix just high enough above the

point of confiscation to escape the ban of the Fifth Amendment. At no time did the Commission intend it to be that "just and reasonable" rate mentioned in the Interstate Commerce Act or intend to fix it upon the basis prescribed in that Act. It had already decided that the old rates were not in violation of any provision of the Interstate Commerce Act (100 I. C. C. 79). The Commission construed the Resolution as requiring it to cease exercising its discretion in so far as rates on agricultural products suffering from depression were concerned, and to perform the purely mechanical function of fixing "the minimum charge that can be made for the service and permit the carrier to live" (R. 27). It construed it as directing it to forthwith reduce an existing rate, if it was in excess of the irreducible minimum, even though the existing rate had been established by the carrier and was reasonable measured by the standards of the Interstate Commerce Act.

That the Commission has deliberately construed the Resolution as requiring a wholly different standard to be applied than is set by the Act, appears not only in its report in this case, but also from its reports in subsequent proceedings under the Resolution. In

South Carolina Produce Assn. v. A. & R. R. Co., 152 I. C. C. 5, 27,

it is said:

"Moreover, in view of the fact that the rates which we propose to prescribe will be, in our judgment, the lowest possible lawful rates which may properly be prescribed, under the evidence

in this case, such a standard, prescribed for the future, can not be accepted as a standard of reasonable rates in the past. *That resolution directs us to take into consideration the economic necessities of a shipper when fixing a rate structure. Rates made in contemplation of that resolution are less than maximum reasonable rates.* This inevitably follows from the provision of the law. A certain zone of reasonableness is created within the limits of which any rate so falling must be considered reasonable. We can prescribe such a basis for the future; but if we have settled upon the measure of such a rate taking into consideration the provisions of the resolution, *it is clear that a rate arrived at upon such considerations is not a maximum reasonable one.* If such be true, it is unsound automatically to take a rate found reasonable for the future in the light of the Hoch-Smith Resolution and prescribe it in the past as a basis for reparation, because to do so would be to award damages down to the basis of a rate which admittedly is lower than a reasonable maximum."

In *Muller & Co. v. Pere Marquette Ry. Co.*, 151 I. C. C. 787, it was found that the producers of chicory in Michigan were suffering from depression. It was further found (p. 793):

"Considering all the evidence of record, it can not fairly be said that the rate assailed is higher than a reasonable maximum rate over either route. * * *

"We therefore find from the evidence that the assailed rate was and is not in excess of a reasonable maximum rate, but that for the future the rate assailed will be unreasonable and in excess of the lowest possible lawful rate compatible with the maintenance of adequate transportation service * * *"

Such a construction does violence to the very terms of the Resolution and runs counter to its meaning as explained by its authors and sponsors. The Resolution requires that the changes be "lawful changes", and that the rates be "lawful rates"; lawful in view of the existing law.

The Interstate Commerce Act and the Constitution constitute the law referred to in the Resolution.

Section 1 of the Act provides that:

> "All charges * * * shall be just and reasonable, and every unjust and unreasonable charge * * * is prohibited and declared to be unlawful";

Section 3 of the Act provides that:

> "It shall be unlawful * * * to make or give any undue or unreasonable preference or advantage * * * or to subject any particular person * * * or locality or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage * * *."

Section 15 of the Act provides that:

> "Whenever, after full hearing, upon a complaint, * * * or * * * under an order for investigation and hearing made by the commission of its own initiative, * * * the commission shall be of the opinion that any * * * rate * * * is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, * * * the commission is authorized and empowered to determine and prescribe what will be the just and reasonable * * * rate * * *."

These provisions fix and limit the authority of the Commission. They constituted the law governing the

power of the Commission in prescribing rates at the time of the passage of the Resolution. They constitute the measure of the "lawful" changes and the "lawful rates" which the Commission was authorized to prescribe under the Resolution.

Under these sections it has been held that

> "A carrier is entitled to initiate rates, and, in this connection, to adopt such policy of rate making as to it seems wise."
>
> *United States v. Illinois Central R. Co.*, 263 U. S. 515, 522.

and the powers of the Commission have been defined as follows:

> "Under the statute the carrier retains the primary right to make rates, but if, after hearing, they are shown to be unreasonable, the Commission may set them aside and require the substitution of just for unjust charges. The Commission's right to act depends upon the existence of this fact, and if there was no evidence to show that the rates were unreasonable, there was no jurisdiction to make the order. * * *"
>
> *Interstate Commerce Commission v. Louisville and Nashville R. R. Co.*, 227 U. S. 88, 92.

Under the Interstate Commerce Act, no power is given the Commission to regulate the policy of business, to encourage weak industries, to give aid to those in need. It has frequently been held that a rate cannot be based upon the reason that it is to the advantage or disadvantage of certain industries or localities.

Thus in *Interstate Commerce Commission v. Diffenbaugh*, 222 U. S. 42, 46, Mr. Justice Holmes says:

"The law does not attempt to equalize fortune, opportunities or abilities."

The Commission itself has declared that:

"* * * The power has not been lodged with this tribunal to equalize economic advantages, to place one market in competition with another, or to treat all railroads as part of one great whole. * * *"

Ashland Fire Brick Company v. Southern Ry. Co., 22 I. C. C. 115, 121.

In *Northern Pacific Ry. Co. v. North Dakota*, 236 U. S. 585, 598, Mr. Justice Hughes said:

"Certainly, it could not be said that the carrier may be required to charge excessive rates to some in order that others may be served at a rate unreasonably low. That would be but arbitrary action."

In *Interstate Commerce Commission v. Union Pacific R. R. Co.*, 222 U. S. 541, 553, 555, the court's opinion indicates that it would be wrong to base a rate upon the condition of the lumber business.

In *Southern Pacific Co. v. Interstate Commerce Commission*, 219 U. S. 433, the court set aside an order of the Commission which declared an increased rate on lumber to be unreasonable. The carrier insisted that, "although the order made by the Commission may have been couched in a form which would cause it, superficially considered, to appear to be but the exercise of an authority to correct an unreasonable rate," yet in effect it "was based upon the assumption by that body of the possession of a power not conferred by law" (p. 443). It also insisted that

the order of the Commission was void because it "did not merely exert the power conferred by law to correct an unjust and unreasonable rate, but that it made the order * * * upon the theory that the power was possessed to set aside a just and reasonable rate lawfully fixed by a railroad whenever the Commission deemed that it would be equitable to shippers in a particular district to put in force a reduced rate."

The court held that the Commission's order, in effect, "was based upon the belief by the Commission that it had the right under the law to protect the lumber interests of the Willamette Valley from the consequences which it was deemed would arise from a change of the rate" (p. 449). This misinterpretation of its powers made the order void. The opinion, quoting counsel's characterization of the power exerted, terms it "an abnormal and extraordinary power", and one "which, if it obtained would open a vast field for the exercise of discretion, to the destruction of rights of private property in railroads", one which "would in effect assert public ownership without any of the responsibilities which ownership would imply" (p. 444).

The case was referred to in the case of

Chicago, Rock Island & Pacific Ry. Co. v. United States, 274 U. S. 29, 33.

Mr. Justice Sutherland says of it:

"In that case [*S. P. Co. v. Interstate Commerce Commission,* 219 U. S. 443] it appeared upon the face of the record that the commission

had not exerted its power to correct an unjust and unreasonable rate, but had made the order complained of upon the theory that it possessed the power to set aside a just and reasonable rate whenever the commission deemed that it would be equitable to shippers in a particular district to put in force a reduced rate."

In *Texas and Pacific Ry. Co. v. Interstate Commerce Commission*, 162 U. S. 197, 221, the court held that the Commission has not the power to reinforce the tariff laws, so as to give protection to American manufacturers and producers from competition by foreign low-priced labor. The tariff laws, said the court, "differ wholly in their objects from the law to regulate commerce. Their main purpose is to collect revenues with which to meet the expenditures of the government" (p. 220).

In *McLean Lumber Co. v. United States*, 237 Fed. 460, 470, before Circuit Judge Warrington, and District Judges McCall and Sanford, the court said:

"* * * It is the duty of the Commission, in passing on the reasonableness of a rate, to consider the conditions affecting the welfare both of the shippers and the carriers. *Texas Railroad v. Interstate Commission*, 162 U. S. 197, 219 * * *. However, the carrier is not to be denied the right to change from an unreasonably low rate, which has formerly prevailed, to a just and reasonable charge for the future, merely because of the injurious consequences which would arise to shippers from a change in the rate. *Southern Pacific Co. v. Interstate Commission*, 219 U. S. 433, 449 * * *; *Atchison Railroad v. Interstate Commission* (Comm. Ct.) 190 Fed. 591, 594, and

203 Fed. 56, affirmed * * * 231 U. S. 736; and *Rates on Crushed Stone,* 29 I. C. C. 136."

In *Atchison, T. & S. F. Ry. Co. v. Interstate Commerce Commission,* 190 Fed. 591, the Commerce Court held void an order reducing the rate on lemons. The rate had been reduced to a point at which, in the judgment of the Commission, California growers might successfully compete with their Sicilian competitors in a broader market than would otherwise be possible. "In other words", to quote from the opinion of the Court (p. 592), "the Commission acted upon the erroneous assumption that it had the power and the right, if not the duty, so to adjust railroad rates as would give to the American industry protection against foreign competition". The court further said (p. 594):

> "The authority granted it under section 15 of the act to regulate commerce to prescribe reasonable rates when it shall be of the opinion that the rates fixed by the carrier are unreasonable does not confer absolute or arbitrary power to act on any consideration which the commission may deem best for the public, the shippers and the carrier. Its order must be based on transportation considerations. * * *.
>
> "As in our judgment the order is based primarily on the assumed authority to protect the industry against foreign competition, it must be held void as beyond the powers delegated to the commission." (p. 596)

In *Anchor Coal Co. v. United States,* 25 Fed. (2d) 462, the court discussed in considerable detail the powers of the Commission under the Act, and as

affected by the Resolution. It reviewed the foregoing decisions and concluded that (p. 472),

> "The Commission does not have the right, however, to regulate industrial conditions under the guise of regulating rates."

The effect of the amendments to the Act, made by the Transportation Act of 1920, were considered and the court said (p. 473),

> "But we are satisfied that it was never intended by the act that, in exercising this power, the Commission should consider the loss of business of one community due to industrial conditions and attempt to restore it by increasing the differential in the freight rates between that community and others which compete with it."

The effect of the Hoch-Smith Resolution was also considered and the court said (p. 473):

> "The Commission seems to have thought that it was justified in considering industrial conditions and the shift of traffic as a reason for widening the differential because of the provisions of the Hoch-Smith Resolution."

After quoting the Resolution the court held (p. 474):

> "So far as the general language of the resolution is concerned, to the effect that the conditions which prevail in industry should be considered in adjusting freight rates, to the end that commodities may freely move, this is no more than a general declaration that freight rates shall be adjusted in such a way as to provide the country with an adequate system of transportation, and Congress certainly did not intend by this language to create in the Commission an economic dictatorship over the various sections of the country, with power to kill or make alive. If the

Commission has the right in a rate adjustment to consider the shift in traffic to a community already paying a higher rate, and act upon it as one of the factors in still further widening the rate differential, its power to control the economic development of the country is practically unlimited. The shift in cotton manufacturing, in fruit growing, in furniture manufacturing, in short in every branch of industry, will become a matter for consideration by the Commission; for all depend upon freight rates, all have rates in which the differential between long and short hauls is narrow, and all experience periods when there are shifts of traffic from one section to another, due to varying industrial conditions. We feel perfectly certain that Congress did not intend to vest such power in the Commission. And the fact that the Commission seemed to consider that the Hoch-Smith resolution required it to consider or give effect to industrial conditions and the shift of traffic, or at least showed a spirit and purpose in that regard which should be deferred to, is of itself sufficient to invalidate the order complained of. U. S. v. N. Y. Cent. R. R., 263 U. S. 603, 610, 44 S. Ct. 212; 68 L. Ed. 470."

The repeated declarations by the courts to the effect that the purpose of rate-making is not to "equalize fortune or opportunities"; criticisms of action by administrative bodies regulating rates as being taken "for the purpose of equalizing industrial conditions"; the reference to the exercise of such a function as "abnormal", "unprecedented", "extraordinary", "arbitrary action", plainly indicate, what is already clear from the language of the acts regulating interstate commerce, that the granting of aid directly to a "distressed industry", through the agency of rate regula-

tion is forbidden by existing legislation. To permit such a principle of rate-making would constitute the Commission the economic dictator of the country, would lead government into dangerous experiments and would tend to great injustice and disarrangements in the affairs of industry and agriculture.

The phrase "lowest possible lawful rates compatible with the maintenance of adequate transportation service" does not warrant the Commission's conclusion that a rate barely avoiding confiscation is required to be established for agricultural products suffering from depression.

The Commission's view might have found support in the language of the Resolution as originally introduced in the Senate, which directed, as to agricultural products suffering from depression, "the lowest possible rates". Under such language the minimum rate permitted by the Constitution might have been referred to. But the Resolution was amended, before debate in the Senate, to substantially its present form by inserting therein the requirement that the rates were to be "lawful" and also that they were to be "compatible with the maintenance of adequate transportation service", neither of which requirements appeared in the original draft. As so amended it refers to the standards of section 15a as well as of section 1 of the Act. By section 15a the Commission is directed "in the exercise of its power to prescribe just and reasonable rates" to adjust rates so that the carriers will be permitted to earn a fair re-

turn on the value of their properties. The Commission is to fix what will be a fair return, giving due consideration "to the transportation needs of the country and the necessity * * * of enlarging such facilities in order to provide the people of the United States with adequate transportation". The rates to be prescribed under the Resolution are not to be at the lowest limit of the zone of reasonableness, conceding for the moment that there is such a zone, but are to be lawful rates, i. e., just and reasonable rates sufficient to maintain adequate transportation service.

The only effect of the words "lowest possible" preceding "lawful rates compatible with the maintenance of adequate transportation service" is to emphasize to the Commission that the rates on agricultural products suffering from depression shall be no higher than required to conform to section 15a and shall be as favorable to the shipper as consistent with the provisions of the Act. When read with the context in which used they carry no implication that a new standard was intended to be created, particularly a standard not for uniform application, but to be used to favor certain classes of shippers and dependent entirely on conditions unrelated to transportation; conditions which had never before been permitted weight in fixing rates and which, as we will show hereafter, cannot under the Constitution be considered.

It is submitted that when the Commission deemed itself under the duty to reduce a reasonable rate

because it was not in the judgment of the Commission "the lowest possible lawful rate" (i. e., just above the point of confiscation), it misapplied and misinterpreted the Resolution. The purpose of the Commission to reduce rates on agricultural products suffering from depression may have been laudable, but that object could only be accomplished in those cases where the existing rates were unreasonable under the existing law.

The Commission in this case seems to have followed the same mental processes as witness Hendrick, who testified before the Commission (R. 196).

> "There was a time when railroads begged for assistance and they got it and the farmer paid the bill. The farmer is today in exactly the same position that the railroads were then. He is asking the government of the United States and the railroads to get behind him and give him relief. The government cannot change climatic conditions, but it can change many things, among them freight rates. There ought to be a very considerable reduction in freight rates."

The wish may have been father to the thought, but the accomplishment of the wish "required a determination of what was just and reasonable exactly as in any other case arising under the Interstate Commerce Act". *United States v. New York Central R. R.* (supra). The Commission here did not pretend to determine what was "just and reasonable" exactly as in any other case. It considered that Congress had prescribed a new measure, a rate barely above the point of confiscation, and it was rigidly applying that

measure. In this it erred, and the order is therefore void.

B. If the Resolution properly construed authorizes the Commission to reduce existing reasonable rates, such reduction is only authorized where it is "compatible with the maintenance of adequate transportation service". The Commission has interpreted this to mean that a reasonable rate may be reduced, although the carriers are not earning the fair return specified pursuant to Section 15a. This is in effect to repeal Section 15a, and is an improper interpretation of the Resolution. If the Resolution authorizes the Commission to reduce a reasonable rate, where the carriers are not earning a fair return, it also requires that other rates be adjusted simultaneously so that the carriers' revenue already inadequate, will not be impaired further.

The Resolution directs the Commission to effect such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by depression at the lowest possible lawful rates compatible with the maintenance of adequate transportation service.

We have already pointed out that this prescribed no new standard of rate making, invested the Commission with no greater or different powers than it already possessed, and left the provisions of the Interstate Commerce Act unchanged. Perhaps it was an excess of caution that induced the Congress not only to provide that the rates prescribed under the Resolution should be "lawful changes", and the rates "lawful rates", but also to specify that such rates must be "compatible with the maintenance of adequate transportation service". These words were not

picked out of the air. They are strangely like the words, "in order to provide the people of the United States with adequate transportation", which appear in section 15a (3) of the Interstate Commerce Act. They are even more similar to the expression used in *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563, 585, where this court in speaking of the Transportation Act said, "The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and take other important steps to maintain an adequate railway service for the people of the United States."

From the text of the Resolution it is therefore clear that the Congress intended that the Commission in proceeding under the Resolution should do nothing which would interfere with the affirmative duty imposed upon the Commission by Congress, to fix rates so that the country would be provided with an adequate system of transportation.

Until the enactment of the Transportation Act of 1920, regulation of the carriers had been repressive in character. The government was concerned merely with the prevention of certain abuses by the railroads, including the charging of unreasonable rates and discriminatory practices. The Transportation Act marked a new departure, in which for the first time the Congress recognized that railroad problems required affirmative treatment as well as repression. The affirmative policy of providing the country with

an adequate system of transportation by requiring that rates be fixed so as to yield the carriers a fair return was concretely stated in section 15a of the Act, which imposed upon the Commission the affirmative and continuing duty,

> "In the exercise of its power to prescribe just and reasonable rates the commission shall initiate, modify, establish or adjust such rates so that carriers as a whole * * * will * * * earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return * * *."

That section provides further:

> "The commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon * * *. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity * * * of enlarging such facilities, in order to provide the people of the United States with adequate transportation * * *."

The Transportation Act, 1920 (41 Stat. p. 456) also provides (sec. 500):

> "It is hereby declared to be the policy of Congress * * * to foster and preserve in full vigor both rail and water transportation."

The purpose and effect of this legislation has been aptly summarized by this court in the *New England Divisions Case,* 261 U. S. 184, 189, as follows:

> "Transportation Act, 1920, introduced into the federal legislation a new railroad policy. *Rail-*

road Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Co., 257 U. S. 563, 585. Theretofore, the effort of Congress had been directed mainly to the prevention of abuses; particularly, those arising from excessive or discriminatory rates. The 1920 Act sought to insure, also, adequate transportation service. That such was its purpose, Congress did not leave to inference. The new purpose was expressed in unequivocal language. And to attain it, new rights, new obligations, new machinery, were created. The new provisions took a wide range. Prominent among them are those specially designed to secure a fair return on capital devoted to the transportation service. Upon the Commission, new powers were conferred and new duties were imposed."

In *Dayton-Goose Creek Ry. Co. v. United States*, 263 U. S. 456, 478, the court said:

"The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged."

Shortly after the enactment of the Resolution, it was urged in behalf of certain shippers in a proceeding pending before the Commission, in which carriers in the Western District were seeking increases in freight rates (*Revenues in Western District,* 113 I. C. C. 3, 11), that the Hoch-Smith Resolution,

(1) "had the effect of repealing those portions of Section 15a of the interstate commerce act on which the carriers' petitions are based," and

(2) "that the rates on agricultural products, including livestock, in effect at the time of the approval of the resolution, became in effect the legislative maximum rates on those commodities, which may not be increased except upon a finding by us [the Commission] or the courts that the existing rates are confiscatory."

As to the latter contention, the Commission concluded:

> "we are of the view that we are not debarred by the resolution from affording the carriers relief through the medium of a general increase in rates prior to the completion of the investigation under that resolution, if need for such action arises upon a clear showing of necessity. Both section 15a and the resolution must be given a construction which makes them practicable and workable. See *New England Divisions Case,* 261 U. S. 184, 197."

The contention that the Resolution repealed section 15a was also rejected by the Commission in the following language:

"With the contention that the resolution repeals section 15a we are not in accord. The resolution has the force and effect of an act of Congress. In it there is no specific repeal of any provision of existing law, and there is no reason for holding that the resolution by implication repealed or suspended the provisions of section 15a.

"The resolution clearly points out that in making any change in accordance with its provisions, we shall give due regard 'to the maintenance of an adequate system of transportation', and that the fixation of the 'lowest possible lawful rates on products of agriculture, including livestock,' shall be 'compatible with the maintenance of adequate transportation service'. These are expressions somewhat similar to those used by the Supreme Court in decisions rendered prior to the adoption of the resolution, specifically referring to the provisions of section 15a wherein Congress indicated that in determining what would be a fair return consideration should be given, among other things, to the transportation needs of the country and the necessity of enlarging such facilities in order to provide the people with adequate transportation. See *Wisconsin R. R. Commission v. C. B. & Q. R. R. Co.*, 257 U. S. 563, 585, decided February 27, 1922; *New England Division Case*, supra, page 190, February 19, 1923; *Dayton-Goose Creek Ry. v. U. S.*, 263 U. S. 456, 478, January 7, 1924. Congress could not have intended to repeal or suspend by indirection so important a provision of law as section 15a."

This was followed by the further significant statement (p. 13):

"It is provided by the resolution that we shall prescribe on products of agriculture so affected by depression, including livestock, the lowest

possible lawful rates. It is contended, therefore, that the present rates thereon may not be increased unless they are found to be confiscatory. While confiscatory rates are unlawful, *it does not follow that all rates which escape confiscation are lawful.* As we construe the resolution, it does not prevent increases of rates on all livestock, or on all products of agriculture which are above the point of confiscation."

Evidently the view of the Commission has undergone some change since this was written (July 14, 1926), for in the instant case the Commission consciously and intentionally fixed a rate which it considered would be just above the point of confiscation.

It is clear that the Resolution did not repeal section 15a. Not even the Commission thought that. But what attention if any did the Commission pay to section 15a when it considered the rates in this case? What attention did it pay to the explicit provision in the Resolution that the rates must be "compatible with the maintenance of adequate transportation service"? From the face of the report it is plain that the Commission in this case ignored its affirmative duties under section 15a and disregarded the requirement of the Resolution that the rates be compatible with the maintenance of adequate transportation service.

The reduction ordered by the Commission deprived the carriers of annual revenue in excess of $2,700,000. This revenue was taken principally from the western carriers who handle the bulk of the traffic. The western carriers deprived of this revenue were

admittedly not earning the fair return prescribed pursuant to section 15a. We have, therefore, an order of the Commission, depriving carriers who are not earning a fair return, of revenue in excess of $2,700,000 per annum. And this reduction in revenue results not from the lowering of an unreasonable rate, but from the lowering of a reasonable rate, which was lowered because it was in excess of what the Commission considered to be the "lowest possible lawful rate compatible with the maintenance of adequate transportation service". But how can a rate be compatible with the maintenance of adequate transportation service when it is brought about through the reduction of a reasonable rate, and is accompanied by a reduction of more than $2,700,000 in the annual revenue of carriers which are not earning the fair return prescribed pursuant to section 15a?

It is submitted that a proper construction of the Resolution in the light of Section 15a makes necessary adherence to the following principles:

(1) The lowest possible lawful rates compatible with the maintenance of adequate transportation service are the just, reasonable and non-prejudicial rates which are required by the Interstate Commerce Act, so related to the general rate structure as to produce the fair return contemplated by that Act.

(2) As asserted by it in *Increased Rates, 1920,* 58 I. C. C. 220, at 226, the Commission may exercise reasonable discretion in fixing the rate of return, but, once fixed, the administrative task devolves upon the Commission of fixing such rates as will yield in the aggregate the fair return, as nearly as may be.

(3) In *Railroad Commission of Wisconsin v. C. B. & Q. R. R. Co.*, 257 U. S. 563, at 586, the inter-relationship between Sections 13 and 15a of the Interstate Commerce Act is discussed. The phraseology of the Resolution makes clear the same necessary inter-relationship with Section 15a. The Resolution repeats and affirms the intent to maintain an adequate system of transportation.

(4) This Court, in *New York v. United States*, 257 U. S. 591, at 602 (in addition to the *Wisconsin case*, *New England Division case*, and *Dayton-Goose Creek case*), has enunciated the proposition that the Interstate Commerce Commission must attempt to secure a fair return through the medium of initiating rates under Section 15a so as to carry out the declared purpose of Congress.

(5) The Commission can not carry out that purpose by proceeding as it has in this case. Its only discretion under Section 15a in respect of the maintenance of an adequate transportation service is to fix, within reasonable limits, the percentage which shall constitute a fair return on the aggregate property value. Beyond that, its administrative duty is to fix rates so as to yield the fair return as nearly as may be. Instead, it has here attempted to substitute for the fair return which Congress considered essential to maintain an adequate transportation system, a test not recognized by the law, namely, that the financial condition of these carriers is "relatively strong".

(6) A reduction in a single rate, found to be unreasonable under the Act, might undoubtedly be made

without specifically considering the requirements of Section 15a (*Dayton-Goose Creek Ry. Co. v. United States*, 263 U. S. 456, at 480; *Interstate Commerce Commission v. Union Pacific R. R. Co.*, 222 U. S. 541, at 549). But where an important rate adjustment, involving large sums, is under consideration, and the rates are not found to be unreasonable under the Act, the Commission must of necessity consider Section 15a and its duty thereunder. In *Railroad Commission v. Southern Pacific Co.*, 264 U. S. 331, the court held that the building of a union station in Los Angeles could not be required without the approval of the Commission. One of the chief reasons given was that the expenditure of large sums might well impair "the financial ability of interstate carriers to discharge their interstate commerce duties" (pages 344, 345, 346 and particularly 347).

What the Commission set out to do and what it did.

The Commission, as has already been pointed out, set out to fix a rate "at the lowest limit or level" of the zone of reasonableness which was defined by the Commission to be at or above "the minimum charge that can be made for the service and permit the carrier to live" (R. 27). That the Commission carried out its intention to at least that extent is shown by the Commission's own estimate of what it did. It stated (R. 67) that if the cost study of the carriers was accepted (and in its original report it did accept it),

> "it would indicate that the prescribed rates are slightly above the operating expenses and would

confirm the impression obtained from comparison with other rates that the new rates, while probably of less than average profitableness, would still leave the traffic attractive to the carriers."

The new rates in the opinion of the Commission would yield something over operating expenses.

The Commission found (R. 53):

"Of the traffic involved, over one-sixth originates on short line railroads in California. At least four of these are now operating at a deficit."

"The Santa Fe and the Baltimore and Ohio are the only carriers shown as having earned in excess of 5.75 per cent in 1926. For 18 principal carriers in the western district, including the Illinois Central system, the average return in 1926 was 4.43 per cent and for five principal carriers in the eastern district, 4.9 per cent. All the foregoing rates of return are computed with respect to the property investment accounts."

This compares with the 5.75% fixed by the Commission as a fair return pursuant to section 15a (68 I. C. C. 676).

The Commission also finds (R. 56):

"While all the defendants who handle the bulk of the deciduous fruit traffic have not as yet made the fair return, their financial condition is relatively strong. It seems clear that the reduction requested, if granted, would not affect the maintenance of adequate transportation service."

The Commission admits (R. 67) that the new rates are of "less than average profitableness". The average profit from all rates, prior to the reduction here

ordered, produced less than a fair return. The best that can be said of this finding is that the Commission does not believe bankruptcy will result from the new rates.

Bearing in mind that the expression "maintenance of adequate transportation service" has reference to the provisions of section 15a, which place the affirmative duty upon the Commission to fix rates that will yield the carriers a fair return, how can a reduction of $2,700,000 in the revenue of carriers which the Commission admits and finds (R. 53) are not earning their fair return be compatible with the maintenance of adequate transportation service? The test is not whether the financial condition of the carriers is relatively strong. "Relatively strong" means only that the carriers are better off financially than they were during a period when their finances were in a state of demoralization. What finally determines whether there is to be adequate transportation service in the future, which is the object sought to be achieved by section 15a, and the object sought to be protected by the specific language of the Resolution, is whether the carriers are earning a fair return.

We do not contend that section 15a prevents the Commission from reducing a rate which is unreasonable. That power is expressly reserved by the provision in section 15a that "the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable". But, as has been shown, the rate here was not unrea-

sonable, and was not considered by the Commission to be unreasonable. Its findings show that the reduction was ordered because the old rates were not the "lowest possible lawful rates" as defined by it and not because the old rates were inherently unreasonable.

It is submitted that the Commission thereby gave effect to the Resolution as modifying Section 15a. It reduced an existing reasonable rate without any regard to the effect of such reduction upon the earning of a "fair return" which Congress had declared was necessary for the maintenance of adequate transportation. Section 15a declared that the maintenance of adequate transportation in the future required the Commission "in the exercise of its power to prescribe just and reasonable rates" to initiate rates which would yield a fair return. The Resolution requires rates "compatible with the maintenance of adequate transportation service". The Commission must have construed this phrase in the Resolution as meaning something different from the earning of a fair return as directed by Section 15a, because, in reducing rates theretofore found reasonable, and not now found to be unreasonable under the Act, the Commission has given no consideration to the effect of such reduction upon the earning of a fair return, but has satisfied itself with the finding that the financial condition of the carriers involved was "relatively strong".

The error of law in construing the statute and the Resolution into which the Commission has thus fallen is thrown into bold relief in later decisions. Thus in *Muller & Co. v. Pere Marquette Ry. Co.*, 151 I. C. C.

787, the Commission found that a rate of 44 cents per 100 pounds on chickory from Port Huron, Michigan to New York did not exceed "a reasonable maximum rate", but nevertheless ordered it reduced to 29 cents on the ground that this latter rate "lies within the zone of reasonableness and that its establishment will not be incompatible with the maintenance of adequate transportation service". Again no consideration was given to the effect of such reduction upon the earning of a "fair return", but a rate specifically found to be not unreasonably high was reduced wholly because of the Resolution. Also, in *Rate Structure Investigation, Part 6, Iron and Steel Articles,* 155 I. C. C. 517, the majority opinion, in which six commissioners joined, reduced the rates on iron and steel articles in Eastern territory to an extent which one of the commissioners who concurred in part declared would result in revenue reductions of not less than $2,500,000. This reduction was ordered upon the basis of this statement of principle appearing at page 562 of the decision:

> "It is evident that in the accomplishment of this task the principle of what the traffic can or will bear is a factor which must be given due consideration. In other words, if agricultural products and livestock are to receive the benefit of the lowest possible lawful rates compatible with the maintenance of adequate transportation service, commodities such as the iron and steel articles here under consideration, which are able to bear relatively high rates, must be accorded rates which approach but do not exceed reasonable maxima."

This construction of the Resolution and the statute could only be the law in the event that the Resolution

has modified the statute. If the Resolution requires that reasonable rates on agricultural products shall be reduced and that rates on other products "which are able to bear relatively high rates" must be so made that they will only "approach", but not exceed, reasonable maximum rates, it is apparent that a different standard for the maintenance of adequate transportation service has been adopted than the earning of a fair return. It is to be recalled that Section 15a specifically provided that the rate-making power there to be exercised was a part of the power of the Commission "to prescribe just and reasonable rates". Clearly the Commission has construed the Resolution as requiring it to make all rates on agricultural products suffering from depression considerably below the level of reasonableness, as maintained prior to the Resolution, and also to make the rates on other products so that they will only "approach" the level of reasonableness which the carriers might have maintained prior to the Resolution.

These interpretations by the Commission of the Resolution clearly show that it is proceeding under a misapprehension of what the law requires it to do. While the Commission has specifically declared that the Resolution did not modify Section 15a, in actual practice it has given such application of the Resolution as most effectively to modify Section 15a. In this case, and in other cases which have arisen under the Resolution, it has proceeded to reduce reasonable rates without making any investigation of its own in respect to the intrinsic cost of the service, without finding that undue preferences have been accorded to

other traffic, and without even basing such reductions upon comparisons with rates on other commodities, but wholly and solely because it seems to believe that Congress in passing the Resolution expressed a desire that such rates should be reduced. This we say is a misconstruction of the Resolution and a violation of the law, because it is not the fixing of "the lowest possible lawful rate compatible with the maintenance of adequate transportation service" as the standard for such maintenance had been theretofore declared by Congress and commented upon by the Supreme Court, nor is it a compliance with the duty imposed upon the Commission by Section 15a to initiate rates that will yield the carriers a fair return.

The most that could be said for such a construction of the Resolution would be that if carriers, not earning a fair return, are to be deprived of substantial revenue by the reduction of a reasonable rate, there must be "a redistribution of rates" accompanied by a contemporaneous increase of other rates, so as to preserve the standard of a fair return. If this were deemed to be the proper interpretation of the Resolution, it is evident that the Commission has not followed that interpretation here.

C. The Commission erroneously construed the provisions of the Resolution respecting "freedom of movement by common carriers of the products of agriculture affected by that depression" to mean that notwithstanding a long, steady and "enormous increase in the tonnage of such fruits" in interstate commerce, freedom of movement did not exist unless the shippers were making a profit.

The Resolution declares it to be the true policy in rate making "that conditions which at any given

time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move". It further directs the Commission in view of the existing depression in agriculture "to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service * * *".

In respect of rates on agricultural products suffering from depression, the action of the Commission is directed to and limited to such changes "as will promote the freedom of movement" of such products. If freedom of movement already exists, the Resolution does not direct or authorize the Commission to make any change.

"Freedom of movement" was therefore a material issue. If there was freedom of movement under the existing rates, the Commission had no authority under the Resolution to change them, unless they were unreasonable or discriminatory as measured by the provisions of the Act.

What does the phrase "freedom of movement" mean? Does it mean the free flow of commerce unimpaired by unreasonable or discriminatory rates? Or does it require in addition that the shippers enjoy a profit on their business, notwithstanding that the rates are reasonable and that there has been a steady and unprecedented increase in the transportation of

the products, and notwithstanding that the failure of the shipper to realize a profit is due not to something connected with transportation, but to overproduction by the shipper, or to the accidents of business? The latter is the construction put upon the phrase by the Commission. It is submitted that such a construction is erroneous.

One of the outstanding facts in this case is the long continued and substantial increase in the movement of deciduous fruits under the rates here under consideration. This is shown by the number of cars moving annually since 1905, as follows (R. 223):

Year	*Total*	*Grapes*
1905	6,326	1,602
1906	5,557	2,052
1907	6,459	3,460
1908	10,719	3,819
1909	13,122	5,880
1910	11,936	4,948
1911	12,539	6,374
1912	13,344	6,357
1913	13,332	6,363
1914	16,146	8,773
1915	16,778	9,563
1916	17,891	9,722
1917	24,628	13,944
1918	27,417	16,358
1919	29,971	19,228
1920	35,246	24,152
1921	40,209	28,419
1922	53,961	41,463
1923	69,777	52,339
1924	66,786	54,775
1925	86,795	71,155
1926	78,803	60,786
1927*	89,835	72,330

*Shown by affidavit (R. 104).

The Commission found (R. 19) that "California ships more plums and cherries than the remainder of the United States, but by far the heaviest movement from the state is of grapes. In 1926 California shipped 81% of the car-load shipments of grapes throughout the United States (* * * and of pears) over 38% of all car-load shipments in the United States".

The Commission found that from 1924 to 1926 the production of certain fruits in California increased as follows (R. 25):

Pears	62%
Plums	82%
Grapes	33-1/3%

The Commission further stated (R. 38) that "there has been an enormous increase in the tonnage of these fruits" and Commissioner McManamy says (R. 64):

> "* * * The record discloses that the shipments of juice grapes increased about one-third from 1924 to 1926 and that the number of acres in grapes increased from 434,907 in 1923, to 635,236 in 1926. The increase in production has been vastly greater in proportion than the increase in the population of the country. * * * The record shows that each year embargoes were placed on grapes at the principal eastern cities because the supply could not be disposed of. * * *"

The dominance of the California deciduous fruit industry in the markets of the country was found by the Commission in a subsequent proceeding,

Chautauqua & Erie Grape Growers' Assn. v. Erie R. R. Co., 146 I. C. C. 403, 404.

"The principal grape producing states are California, New York, Michigan and Pennsyl-

vania. * * * There is keen competition between the Concord and California grapes for wine and table uses. * * *

"In 1926 there were 12,673 carload shipments of Concord grapes, of which 6,519 carloads originated in the Belt, 2,073 carloads in the Central Lakes and Hudson Valley regions of New York, and 3,081 carloads in Michigan. In the same year there were 64,367 carload shipments of California grapes. The principal markets for both the California and Concord grapes are in official classification territory.

"The production of Concord grapes has shown no decided trend either upward or downward in the past several years although it has been subject to wide fluctuations due chiefly to climatic conditions. The acreage in the Belt was about 41,000 in 1926, having increased only about 1,800 acres since 1920. During the same period the California grapes increased steadily and enormously in acreage and production and except for 1926 in the number of carload shipments."

This is an accurate summary of testimony given in this proceeding by representatives of the Eastern Grape Growers (R. 447, 448, 452).

That the deciduous fruit industry in California is in a state of depression is a fact that is beyond dispute. That many California deciduous fruit growers, principally growers of grapes, are not prosperous is also clear. But those facts alone, viewed in the light of the enormous growth in production, the constant and heavy increase in the shipment of the fruit to the east under these rates, and the capture and domination of the eastern market by the California product, does not show that there is a lack of "freedom

of movement". On the contrary, it indicates entire "freedom of movement" and offers no justification whatever for the conclusion that the depression in the California grape industry is due in any respect to any transportation condition. Rather it points to conditions within the industry itself, for which the industry is itself responsible.

The Commission has construed "freedom of movement" to mean that there is no freedom of movement regardless of the fact that cars and commodities move without interruption; it has held that there is not such freedom, though the rate is reasonable, if the growers are not making a profit and are not prosperous. It has measured freedom of movement by comparing the depressed condition of the fruit industry with the relatively prosperous condition of the carriers and not by any transportation standard.

The matter is discussed in the opinion of the Commission (R. 48):

> "Defendants urge that the charges for transportation have nothing to do with the existing economic conditions in the deciduous-fruit industry. They believe that the proposed reduction would not relieve the growers and claim that there is now entire freedom of movement. In support of this they point to the movement of cars for the past five years as follows:
>
> 1922,.....53,961;
> 1923,.....69,777;
> 1924,.....66,786;
> 1925,.....86,795;
> 1926,.....78,803"
>
> "According to complainant's view, however, 'freedom of movement' as used in the Hoch-Smith

> resolution means more than the hauling of an unprecedented volume of traffic. The record establishes that producers are sustaining serious financial loss, that their indebtedness is increasing, that they are finding it difficult to meet taxes, that banks are foreclosing or assuming the management of properties, and that land values have been entirely deflated. Under such conditions complainant contends that freedom of movement does not exist."

In view of the decision this statement of complainant's contention must represent the construction of the Resolution by the Commission, and indicates that the Commission considers that there is no "freedom of movement" no matter how many cars or how much fruit actually moves, if the shippers are not making a profit and are sustaining serious financial loss. It is significant that there is in the report and order no direct finding that deciduous fruit is not moving freely. There is only the conclusion that the new rates fixed by the Commission "are necessary *to promote* the freedom of movement by defendants of the specified products of agriculture now affected by existing depression in agriculture."

In the earlier case, *California Growers' & Shippers' Protective League v. Southern Pacific Co.*, 100 I. C. C. 79, the Commission found specifically that deciduous fruits were moving freely in interstate commerce under the existing rates (R. 316), finding:

> "The record in this case shows affirmatively that the deciduous fruits here under consideration are moving freely under the present rates, and that the volume of movement has increased greatly during recent years. Complainant's prediction

> that unless lower rates are secured there will be a substantial reduction in tonnage may not be realized. The prediction is based upon the unfavorable financial return to the producers at the time of the hearing, and for a period prior thereto. But this record does not justify the conclusion either that this condition is likely to continue or that it is due in great part to the rate structure. It is suggested in the record that the unfavorable financial results are chargeable in large measure to overproduction, to inability of the eastern market to absorb the supply. If this is so, economic laws, and not the rate adjustment, will sooner or later bring about a reduction in the movement, and such reduction would be desirable."

The earlier case showed the figures only through the year 1923. The movement during the succeeding year was slightly less than in 1923, but the 1925 movement amounted to more than 86,000 cars, 17,000 cars, or over 20% in excess of 1923. The movement in succeeding years was also in excess of the 1923 movement.

The view of the Commission that there is no freedom of movement unless the shipper is making a profit is shown to be in error by the legislative history of the Resolution. In its original form as presented to the Senate, the Resolution provided that rates should be fixed "to the end that commerce may freely move with fair profit to the producer and sold at a reasonable price to the consumer" (S. J. R. 107, as amended in the Senate). The provision "with fair profit to the producer and sold at a reasonable price to the consumer" was eliminated before the Resolution was adopted.

Commissioner McManamy in his dissenting opinion expressed what we consider is the proper construction. He says (R. 64):

> "The report discusses freedom of movement, which is another important requirement of the Hoch-Smith Resolution. * * * In 1916 the total of carload shipments of deciduous fruits from California was 17,891 cars. In 1926 it was 78,803 cars. Of these 9,722 carloads in 1916 and 58,334 carloads in 1926 were grapes. The record shows that each year embargoes were placed on grapes at the principal eastern cities because the supply could not be disposed of and that diversions in search of a market amounted to 1.07 times per car. Surely there is no indication here that freedom of movement has been in any way restricted."

It is submitted that the Commission misconstrued the provision of the resolution respecting "freedom of movement", and that it was in error when it held that there was no freedom of movement notwithstanding the fact that the rates were reasonable, and notwithstanding the fact that there was a continuous and unprecedented increase in the quantities shipped, merely because the shippers were not making a profit. As construed by the Commission, freedom of movement would depend entirely upon the condition of the industry and not upon the fact as to whether cars were actually moving in large and increasing numbers at reasonable rates. It is submitted that this construction is erroneous and the order having been based thereon is invalid.

D. The Commission erroneously construed the Resolution as authorizing it to find without substantial evidence that the existing rate was unreasonable, and that the new rate was the lowest possible lawful rate, and further misconstrued the Resolution as placing upon the carriers the burden of proving that the old rate was the lowest possible lawful rate and that the new rate was lower than the lowest possible lawful rate. The order is arbitrary and invalid since the Resolution does not authorize the Commission to act without substantial evidence and does not alter the existing rule requiring complainant to bear the burden of proof.

As has been shown, the Commission did not attempt to find whether the old rate was reasonable or unreasonable. It considered its duty to be to fix "the lowest possible lawful rate", which it defined to be a rate which in principle must be high enough to cover all of the costs that may fairly be allocated to the service plus at least some margin of profit (R. 26). In the view of the Commission the issue was not whether the old rate was reasonable or was not reasonable; it was rather whether the old rate was the lowest possible lawful rate as defined by the Commission; if it was not the lowest possible lawful rate, it was of the opinion that the old rate must be reduced until it reached that point.

The Commission therefore set itself the task of determining two issues of fact.

First. Is the existing rate the lowest possible lawful rate, as defined by it?

Second. If it is not, what rate is the lowest possible lawful rate?

With such a theory of its obligations and such a visualization of the issue, the Commission assumed

that it was the duty of the carriers to sustain the burden of proof.

To be sure, there was much testimony introduced bearing upon the unreasonableness of the existing rate. Complainant introduced evidence to show it was unreasonable; the carriers to show the contrary. But this evidence was directed to an issue which the Commission considered not the real issue in the case.

The mass of testimony respecting operating conditions, all of which was similar in character to testimony considered in the former case involving these same rates (100 I. C. C. 79) was likewise directed to what the Commission considered an immaterial issue.

The evidence respecting the financial condition of the carriers has already been discussed. It had no bearing upon the issue as to whether these rates were unreasonable. *Interstate Commerce Commission v. Union Pacific R. R. Co.*, 222 U. S. 541. It furnishes no substantial evidence upon which to find that the new rates were the lowest possible lawful rates but, on the contrary, affirmatively shows that the carriers were not earning the fair return which under Section 15a of the Act it was the Commission's duty to provide through the fixing of reasonable rates. If it be argued that this evidence was directed only to the return on the book value of the carriers' properties, we reply that complainant made no effort to show the value of those properties by any other test and the Commission (R. 53) made no other finding as to the value or the rate of return thereon. If the evidence of the carriers as to their book values is in any way

questionable the record is devoid of any evidence as to the value or rate of return.

The evidence as to the depression in the deciduous fruit industry of California can by no stretch of the imagination determine what is the lowest possible lawful rate even as defined by the Commission.

The Commission (R. 57, 58) specified nine points of distinction between the record in this case and that in the earlier case. As we have shown (*ante* page 38), four of these differences relate exclusively to matters arising under the Resolution. Of the remaining five points, which relate to matters ordinarily considered in connection with the reasonableness of rates, number 4, the willingness of the shippers to submit to an increased minimum weight, and number 5, the increase in volume of movement, would in the absence of other circumstances, be appropriate evidence to consider in support of a reduction in rates. It should be noted, however, that the increase in minimum weight was applicable only to grapes, the other deciduous fruits retaining the old minimum weight of 26,000 pounds. Furthermore the increased minimum on grapes would still leave a lighter average load than in 1922, as appears from finding number 8. As to the increase in volume of movement, it is hardly consistent to rely on this factor in support of a reduced rate which is prescribed as the "lowest possible lawful rate" * * * "to promote the freedom of movement." Moreover, it appears that these rates were originally voluntarily reduced to a low level to assist the industry (R. 28, 37).

The 8th point of difference mentioned by the Commission, the decrease in the average loading of over 3,000 pounds, is a factor which is ordinarily considered to justify an increase in rates as is also the 9th difference, an increase of 61 miles in the average haul. The increase of 61 miles in average haul represents for the 78,803 cars moving in 1926, 4,806,983 additional car-miles of service. The cost of service found by the Commission, as corrected by it (R. 55, 67), averages 14.6¢ per car-mile without taxes or rentals, or an increase to the carriers of $701,819.52 above the cost which would have been incurred for handling the same traffic the average distance that the traffic moved when the former case was decided.

The remaining point of difference between the two cases is in itself unimportant. The fact that "complainant has submitted a more comprehensive rate showing" proves nothing, *Louisville & Nashville R. R. Co. v. U. S.*, 238 U. S. 1. Much of this rate evidence, as will be found by comparison of the Commission's two Reports (R. 16 and 281), was a mere repetition of what was introduced in the former case.

The evidence on the question of rates introduced by the complainant fell under three general heads:

(1) An analysis and comparison of the rates upon fruits and vegetables that move from California to Eastern defined territories;

(2) A comparison of the existing rates with rates upon other perishable traffic in effect throughout the United States; and

(3) A comparison of the relative increases in rate levels on deciduous fruits and other commodities since June 24, 1928.

Rates on fruits and vegetables from California.

The comparison with rates on other fruits and vegetables from California to Eastern points was the same comparison that was made and passed upon in the earlier case before the Commission (Compare R. 29-32 with R. 287-293).

Even apart from the prior finding that these comparisons did not establish the unreasonableness of the rates attacked, the effect of this showing was at best inconclusive. The Commission found, after examining the comparison, that the

> "earnings per car on deciduous fruits are higher than on lemons, materially higher than on fresh vegetables and cantaloupes, but lower than on apples and citrus fruits. Considering the length of haul, the net-ton mile earnings on deciduous fruits are relatively higher than on all the other commodities, while the car-mile and gross-ton mile earnings are higher in some instances and lower in others." (R. 32)

The Commission has held that car-mile or gross ton-mile earnings constitute the fairest test of comparative rates. In view of the direct evidence of the carriers as to the cost of service this comparison indicating that the rates attacked are fairly comparable with the rates on other similar commodities affords no support for a finding that the old rates were unreasonable. This is particularly true in view of the

express finding that the rates on oranges were "not too high" (R. 42).

But, whatever may be said as to the effect of this testimony to indicate the unreasonableness of the old rates, it affords no basis whatever for a finding that the new rates are the lowest possible lawful rates. No evidence was introduced to show whether the rates with which comparison was made were reasonable or were themselves less than the lowest possible lawful rates. The new rates prescribed yield lower earnings than any of the commodities with which comparison is made (R. 31), with the exception of vegetables and cantaloupes, both of which are classified for rate purposes in a lower group than the deciduous fruits here involved.

Rates on bananas and cocoanuts.

Complainant also introduced comparison with the rates on bananas and cocoanuts from gulf ports to various Pacific coast points. These rates applied on imported commodities, which had already borne a transportation charge and were shown to be influenced by water competition. In 1925 11,150 tons of bananas were imported through Los Angeles and San Francisco bay ports alone (R. 34). Such rates are wholly dissimilar in character from domestic rates.

Texas & Pacific Ry. Co. v. Interstate Commerce Commission, 162 U. S. 197.

While under certain circumstances rate comparisons may have probative value for determining the reasonableness of a rate, such comparisons are of no

value unless the rates compared exist under substantially similar circumstances. Where such circumstances do not exist, comparisons of this character do not furnish substantial evidence of the unreasonableness of a rate.

Smyth v. Ames, 169 U. S. 466, 540;
Louisville & Nashville R. R. Co. v. United States, 238 U. S. 1;
Illinois Cent. R. Co. v. Railroad Commission of Kentucky, 1 Fed. (2nd) 805.

Extension of short-haul rates.

The complainant undertook to extend the various rates on deciduous and other fruits for comparatively short hauls to the transcontinental distance in accordance with a percentage rate of progression employed in another case by the Commission in prescribing a scale on cottonseed cake and meal.

This comparison was in substance rejected by the Commission, which stated (R. 36):

> "The projection of the short-haul rates for comparison with those for longer hauls, regardless of the method used, is not a very satisfactory test."

And (R. 35):

> "Defendants criticize the progression of the scale used in projecting short haul rates, and we think with some merit."

In *Cancellation of Transcontinental Class and Commodity Rates,* 142 I. C. C. 151, 155, the Commission cited its report herein as authority to show that projections of this character were not proper.

Comparison of relative rate levels.

The other evidence introduced by complainant was what is termed "a comparison of relative rate levels". This comparison showed that the rates on deciduous fruits are 50.4% higher than the June 24, 1918 rates, as compared with a comparative increase on 75 commodities moving east-bound of 29% above the June 24, 1918, basis.

The Commission in effect held that this condition did not warrant any reduction of the rates when it said (R. 37):

> "A similar contention was made and answered adversely in *State of Washington v. Director General,* 58 I. C. C. 701, 706."

This comparison was again a repetition of a similar showing made in an earlier case and there found not to warrant any reduction in the rates (compare R. 36-38 with R. 293-295).

Such comparisons furnish no substantial evidence for finding that the deciduous fruit rates are unreasonable. They furnish no evidence upon which the Commission could fix $1.60 as the lowest possible lawful rate. As the Commission pointed out, the comparison is made with a pre-war deciduous fruit rate which happened to be the lowest on record, made so by the voluntary action of the carrier. No evidence was introduced to show that the pre-war rates on the other commodities, with which comparisons have been made, were reasonable or unreasonable. It also appears that the whole relationship between transcontinental rates existing prior to the war and after

the war has been substantially altered by water competition through the Panama Canal and local competition in certain products.

The Commission itself has recognized that evidence of this character is incompetent on the issue of what constitutes the lowest possible lawful rate.

In *State of Colorado v. A. T. & S. F. Ry. Co.*, 147 I. C. C. 201, 212, the Commission says:

> "In their briefs and oral arguments complainants claim the benefits of the Hoch-Smith resolution as entitling them to the lowest lawful rates compatible with the maintenance of adequate transportation service. The records in these cases were not particularly presented so as to show the particular facts establishing a case for relief under that resolution, but were directed to the establishment of reasonable rates according to the usual standards, and to the curing of alleged undue prejudice to complainants and preference of their competitors. Therefore these records afford little basis for the prescription of the lowest possible lawful rates on this traffic."

The carriers' showing.

As compared with the complainant's evidence, we find evidence introduced by the carriers which, in every instance, explains and distinguishes the rate comparison suggested and, in every instance, justifies the reasonableness of the rates attacked.

In addition, the carrier introduced evidence of a persuasive and direct nature as to its actual cost of transporting deciduous fruits. This evidence was accepted by the Commission in its original report, almost without criticism, and in its supple-

mental report is used as the basis for a statement that the new rates will bring in a return slightly exceeding the carriers' operating expenses. As these operating expenses do not include taxes, rental of equipment and joint facilities, it is clear that the existing rates cannot do more than cover the full costs.

The Commission's estimate of the evidence.

This in brief was all the evidence before the Commission other than the evidence respecting the depression in the fruit industry. The Commission's own estimate of the effect and persuasiveness of the evidence is shown in its report (R. 58):

> "Considering the relative rates on and earnings of the deciduous-fruit traffic *in the light of the condition of the industry* and of the service performed by the carriers, and giving due weight to the cost study presented by defendants, we are of the view that the present rates are in excess of the lowest possible lawful rates as herein defined."

The Commission thus definitely set down the factors which it took into consideration in finding that the "present rates are in excess of the lowest possible lawful rates as herein defined". These factors are:

First: The relative rates and earnings of the deciduous fruit traffic in the light of the condition of the industry and the service performed by the carriers; and

Second: The cost study presented by the defendants. (The Conrad Study, R. 482.)

These furnished the factual bases for the Commission's decision. What the first one means is rather difficult to ascertain, and perhaps it was intended to be somewhat vague. The second refers, of course, to the Conrad Cost Study presented by the carriers (R. 482).

In its Report on Further Consideration, the Commission admitted that it had made an error in its computations based on the Conrad Cost Study, of $20.79 per car, and that this amount should have been added to the costs to which it had "given due weight" in arriving at its conclusions. Having admitted its error in its previous consideration of the cost study to which it had "given due weight", the Commission proceeds in its Report on Further Consideration to suggest a few questions respecting the results of the cost study which had not occurred to it when it was laboring under the mistaken belief that the carriers' own cost study furnished substantial evidence that the new rate was above the point of confiscation, and concludes (R. 67):

> "In other words, even if the cost study were accepted without question, it would indicate that the prescribed rates are slightly above the operating expenses and would confirm the impression obtained from comparisons with other rates that the new rates, while probably of less than average profitableness, would still leave the traffic attractive to the carriers."

We have, therefore, in the words just quoted, the Commission's own frank characterization of the effect upon it of the evidence.

First: If the carriers' cost study to which the Commission says it had "given due weight" is accepted without question, it would "indicate" that the new rates are slightly above operating expenses; and

Second: it "would confirm the impression" obtained from comparison with other rates that the new rates were "probably" of less than average profitableness, but would still leave the traffic attractive to the carriers.

Instead of finding upon substantial evidence that the old rates were unreasonable, and the new ones reasonable and the lowest possible lawful rates, the Commission fixed the new rates upon the "indication" that they are "slightly" above operating expenses, and upon an "impression" that they "would still leave the traffic attractive to the carriers" although of "less than average profitableness". No law authorizes the Commission to fix rates upon "indications" or upon "impressions". If the Commission must say of the evidence produced before it, that it merely results in an "impression", there is no substantial evidence upon which the Commission can legally act.

The only evidence which had any possible bearing upon what the Commission considered the primary issue in the case was that introduced by the carriers showing the cost incurred by them in the transportation of these deciduous fruits. If this evidence be accepted, as it was by the Commission when it made the order here in controversy, it establishes that the rates prescribed deprive the carriers of the substantial

return to which they are entitled under the Constitution and that the order is therefore void. If this evidence be rejected for any reason, the finding of the Commission that the new rates are the lowest possible lawful rates is wholly without evidence to support it.

Appellees are therefore faced with the dilemma of accepting the cost study introduced by the carriers, which proves the order confiscatory, or of rejecting the cost study and thereby proving that the order is capricious and arbitrary and in excess of the power delegated to the Commission.

The Commission placed the burden of proof on the carriers.

The concluding paragraph of the Report on Further Consideration reads (R. 69):

> "On the whole record, we adhere to our former finding that the present rates are unreasonable and we are not convinced that the rates prescribed are below what are necessary to afford complainants the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

To the same effect are the expressions by Commissioner Eastman in his concurring opinion to the original report, and in his dissenting opinion to the Report on Further Consideration. In his separate concurring opinion, he said (R. 59):

> "While it is by no means clear that the rates in issue are unreasonable and ought to be reduced, complainant is entitled under the Hoch-Smith resolution to the benefit of the doubt, and I can for that reason accept the results reached."

In his dissenting opinion in the second report, Commissioner Eastman said (R. 68):

> "When this case was first decided, I was, as I then indicated in a concurring expression, by no means clear that the rates attacked were unreasonable, but gave complainant the benefit of the doubt because of the Hoch-Smith Resolution."

The Commission in fixing the new rate upon the basis of "impressions", and because the carriers had not convinced it that the new rates were below the "lowest possible lawful rates", was not proceeding in accordance with law. Nor was Commissioner Eastman, who in his concurring opinion gave the "benefit of the doubt" to the complainant. The complaint charged that the old rates were in excess of the lowest possible lawful rates. It was incumbent on the complainant to prove that allegation by substantial competent evidence. That could be done even on the Commission's own theory of the meaning of "the lowest possible lawful rate" only by showing the cost of the service. It was not the duty of the carriers to disprove the allegation in advance of some evidence by the complainant in support thereof, and the Commission erred in assuming that the carriers were under the obligation to "convince" it that the prescribed rates were below the irreducible minimum. The burden was not on the carriers; they were not under the duty of "convincing" the Commission. The Commission proceeded upon the legal theory that if the carriers did not sustain the burden of proof, then the Commission was free to fix the rates upon "impres-

sions" gained from the evidence. It is submitted that this finds no support either in the Resolution or the Act.

The Commission itself, a few months before this proceeding was commenced, had found the rates not unreasonable. This fact appeared from complainant's own evidence (R. 281). Under such circumstances the carriers certainly should not be under the burden of proving the rates to be not unreasonably high, or that they were not in excess of the lowest possible lawful rate, as later defined by the Commission.

We have therefore not only an absence of evidence to support the Commission's finding of the new rate as the "lowest possible lawful rate", but we have also an improper placing upon the carriers of the burden of proof.

E. The Commission misconstrued the Resolution in that it held that a rate which yielded the carrier an amount slightly above operating expenses was a lawful rate. The Interstate Commerce Act and the Constitution require that each rate shall yield to the carriers all proper costs and a substantial profit.

The Commission clearly stated (R. 56) that the primary issue before it was whether the existing rate approached the lowest level of the discretion reposed in it by law. It construed the Resolution as directing it to fix, and it deliberately endeavored to ascertain and fix, the lowest possible rate permitted by the Constitution.

As a preliminary to the discussion of the evidence, it expressed its opinion as to the meaning of the

lowest possible rate which it could fix, and stated in clear and unmistakable language that this was the rate which it was obliged to fix. In this connection we find, in the report of the Commission (R. 27) the following:

> "The resolution is in effect a direction to us to give agricultural commodities affected by depression the lowest rates that it is possible to give without running counter to the provisions of the interstate commerce act and the carriers' rights under the Constitution. Section 1 of the act requires that all rates shall be just and reasonable. What is a reasonable rate? It may be said to be somewhere between *the minimum charge that can be made for the service and permit the carrier to live,* and the maximum charge that can be borne by the shipper * * *."

It quoted its own prior reports as to the purpose of the Resolution and as to its duty thereunder to fix the lowest possible lawful rate, a rate, so the Commission held, which would yield to the carrier a slight return over operating costs (R. 26).

The Commission, having stated that the lowest limit of its discretion in fixing a rate was one which would return to the carrier some margin of profit, framed the issue thus:

> "* * * whether the $1.73 rate assailed approaches the lowest limit or level of the zone of reasonableness permitted by the flexible limit of discretion reposed in us." (R. 56)

Its final judgment was that the existing rate was not the lowest possible lawful rate (R. 58). It fixed the new rate as the "lowest possible lawful rate com-

patible with the maintenance of adequate transportation service" (R. 59).

In its Report on Further Consideration (R. 65) the Commission, after admitting an error of $20.79 which it had made in the estimate of certain costs of the carriers for each car in the service involved, concluded that $55.91 would be available at the present rates,

> "for taxes, rental of equipment or joint facilities, and interest, and this difference would not be eliminated by the prescribed reductions, especially if we assume that the increased minimum load would make some increase in the average revenue per car. In other words, even if the cost study were accepted without question, it would indicate that the prescribed rates *are slightly above the operating expenses* and would confirm the impression obtained from comparisons with other rates that the new rates, while probably of less than average profitableness, would still leave the traffic attractive to the carriers." (R. 67)

The original Report and the Report on Further Consideration thus establish that the Commission believed a rate to be lawful if it returned to the carrier an amount only "slightly above operating expenses". Not only did the Commission express the controlling rule in this form, but it sought to ascertain and fix a rate which would yield to the carriers only a *slight* profit.

It erred in its understanding of the pertinent rule of law. Not only does the Interstate Commerce Act prescribe that rates shall be reasonable, but the carriers are guaranteed by the Constitution the right to establish rates which will yield a *substantial* profit.

The property of the carriers, although dedicated to a public use, is held in private ownership and is subject only to reasonable control and regulation by the Government.

> "The State is without power to require the traffic covered by the fare enjoined to be carried at a loss or without *substantial* compensation over its proper cost."
>
> *Banton v. Belt Line Ry. Corp.*, 268 U. S. 413, 421.

In *Norfolk and Western Ry. Co. v. West Virginia*, 236 U. S. 605, it was sought by governmental regulation to require a carrier to render a service at a rate which would yield but a slight profit. In that case, 97.4203 per cent. of the receipts of the carrier was consumed by expenses incurred in rendering the service. The margin of 2½% was held to be so slight that the court regarded the property of the carrier to have been taken in violation of its constitutional right. The court said, at page 614:

> "It is apparent, from every point of view that this record permits, that the statutory rate at most affords a very narrow margin over the cost of the traffic. It is manifestly not a case where substantial compensation is permitted and where we are asked to enter the domain of the legislative discretion; nor is it one in which it is necessary to determine the value of the property employed in the intrastate business. It is clear that by the reduction in rates the company is forced to carry passengers, if not at or below cost, with merely a nominal reward considering the volume of the traffic affected. We find no basis whatever upon which the rate can be sup-

ported, and it must be concluded, in the light of the principles governing the regulation of rates, that the state exceeded its power in imposing it."

In *Northern Pacific Ry. Co. v. North Dakota,* 236 U. S. 585, decided on the same day as *Norfolk & Western Ry. v. West Virginia,* supra, the Supreme Court affirmed the principle that to be reasonable a rate fixed by governmental authority must accord to the carrier a substantial return upon the property devoted to the particular service. The legislature of North Dakota by statute fixed certain maximum intrastate rates. It was sought to justify the statute as a declaration of public policy to aid in the development of a local industry. Mr. Justice Hughes, delivering the opinion of the court, said (598):

> "We cannot reach the conclusion that the rate in question is to be supported upon the ground of public policy if, upon the facts found, it should be deemed to be less than reasonable.
>
> "* * * But a different question arises when the state has segregated a commodity, or a class of traffic, and has attempted to compel the carrier to transport it at a loss or *without substantial compensation* even though the entire traffic to which the rate is applied is taken into account.
>
> "* * * For, if the carrier's total income enables it to declare a dividend, that would not justify an order requiring it to haul one class of goods for nothing, or for less than a reasonable rate."

See also

> *Interstate Commerce Commission v. Union Pacific R. R. Co.,* 222 U. S. 541, 549.

The Commission in this case failed to observe the principles announced in the cases cited. Its concep-

tion of the applicable law was that its duty was fulfilled if it fixed a rate which would return some profit to the carrier, however slight. If the Commission had properly construed the law and had endeavored to ascertain and fix a rate which would return to the carrier a substantial profit, it seems clear from the report and from its decision in the prior case (100 I. C. C. 79) that the Commission would not have fixed a rate lower than the rate which was attacked in this proceeding.

But whether it be true or not that the Commission regarded the old rate as not inherently unreasonable, the showing that the Commission misconstrued and misapplied the law applicable renders the order invalid. It fixed the new rate by an unwarranted construction of the law. Its error is fundamental and the result is an arbitrary and unjustified rate. Even if this court should conclude that there was evidence which would support the new rate, even if it should be of the opinion that the new rate is not confiscatory, it may not correct the error by itself fixing the rate. Had the Commission been guided by correct legal principles in fixing the new rate, it is impossible to determine what the resultant rate would have been. Obviously it would have fixed a higher rate than it did. The application of a faulty measure of power and duty vitiated the rate fixed beyond the power of a reviewing court to correct, save by annulling the order.

F. The Commission misconstrued the Resolution in that it applied it in an isolated proceeding involving a rate on a particular commodity from a single state, while the Resolution is intended to be applied only in a general investigation into the general rate structure of the country.

There being no enlargement of the Commission's jurisdiction to be found in the Resolution, and the repeated references to "lawful rates" and "lawful changes" obviously referring to the Act, under which the Commission and this Court have held that commercial necessity and the profitableness of an enterprise were immaterial factors in determining the reasonableness of rates, the Resolution can be given effect, consistent with the law, only in the general investigation directed thereby.

With the exception of cases pending before the Commission at the time the Resolution was adopted, as to which particular mention is made in the proviso at the end of the Resolution, the Resolution is directed only to the general comprehensive investigation of the entire rate structure which it orders the Commission to undertake. The express reference in the Resolution to cases pending at the time of its adoption negatives any idea that it was intended to be applied in any proceeding involving a single rate initiated after its adoption. This case was instituted nearly two years later. The Commission, pursuant to the Resolution, initiated a general investigation known as Docket 17000 (R. 518), which is still pending, and application of the Resolution in a proceeding initiated by individual shippers involving a single rate would be wholly inconsistent with the scope of that general investigation.

If the Resolution be considered as prescribing any different standards than existed under the Act it is only in the general investigation that they can be applied in conformity to the twice repeated injunction that any changes be consistent with the maintenance of adequate transportation service. It is only in a general investigation that the conditions "prevailing in our several industries" can be ascertained. It is only in such an investigation that undue advantages given various classes of traffic, or kinds of commodities, or the various localities and parts of the country can be found and corrected. It is only there that the general and comparative levels in market values of the various classes and kinds of commodities can be ascertained and it is only in such an investigation that the Commission could possibly gain the necessary information as to the natural and proper development of the country as a whole. It was in such an investigation, with a more limited scope than directed by the Resolution, that the Commission in 1920 determined what increase to make in rates to fulfill its duties under section 15a, and in 1922, again in attempted compliance with its duties under that section, reduced the general rate level. This is obviously necessary if the Commission is to give any heed to the repeated warning that no rates be prescribed which fail to maintain adequate transportation service.

The evil of attempting to apply a supposed mandate of the Resolution in an isolated proceeding, involving a single rate from one producing district, as

was done here, is manifest. Following the order in this case the producers in Georgia appealed to the Commission under the Resolution and obtained the lowest possible lawful rates (*Georgia Peach Growers Exch. v. A. G. S. R. Co.,* 139 I. C. C. 143, 148 I. C. C. 755). Later came the grape growers of New York and Pennsylvania (*Chautauqua & Erie Grape Growers' Assn. v. Erie R. Co.,* 146 I. C. C. 403) where the reduced rates fixed by the very order here attacked furnished one of the grounds for a reduction in the rates for eastern grapes to eastern markets. Again, fruit growers in the Carolinas appealed to the Commission and relief was granted (*South Carolina Produce Assn. v. A. & R. R. Co.,* 152 I. C. C. 5). Many other cases may be cited where piece-meal reductions for the benefit of single groups of shippers have been afforded. The *Chautauqua & Erie case,* supra, shows the interrelation of rates from various districts to common markets and the competition which requires that reductions granted one district be equalled in another.

In the meantime the general investigation, instituted pursuant to the Resolution (Docket 17000) has been progressing, divided into "Parts" dealing with various commodities. One of the first of those parts to be completed was No. 6, relating to Iron and Steel Products. The report thereon is made in *Rate Structure Investigation, Part 6,* 155 I. C. C. 517, and it was found that no depression exists in that industry, but that many rates were not properly related to each other.

The Commission, to cure the improper relationship found to exist prescribed new rates which Commissioner Woodlock, in a concurring opinion, stated would reduce the carriers' revenues not less than $2,500,000 per year, although "the carriers are not at present earning more than the fair rate of return (prescribed by us) upon anything which can be said to be their fair value" (586).

Application of the Resolution, interpreted as it was by the Commission as authorizing rates less than would otherwise be reasonable, in a single isolated proceeding can only result in a mad scramble for preferences such as has followed the decision in this case, with a resultant steady impairment of the carriers' admittedly inadequate revenues. The results of the investigation so far have led to further decreases in revenues from commodities found to be moving freely and unaffected by depression. No attempt was made in this case to protect the carriers' revenues by a redistribution of charges on other commodities, and such a redistribution is impossible in a proceeding involving but a single rate. The evil consequences of the failure to conform to the plain reading of the Resolution demonstrate the correctness of our interpretation that it was intended to be applied only in the general investigation which it ordered undertaken.

G. The Commission in construing the Resolution as authorizing it to lower rates on deciduous fruits because the industry is in a depressed condition has adopted a new and revolutionary policy in rate making, which is not justified by the provisions of the Resolution, and violates the settled rule of statutory construction that a statute will not be construed to bring about a complete revolution in legislative policy unless it contains clear and definite language demonstrating an intention to effect such result.

Until the passage of the Resolution it was definitely established that under the Interstate Commerce Act, no power was given the Commission to regulate the policy of business, to encourage weak industries and through its rate making power to give aid to those in need. On the contrary as we have demonstrated supra, pp. 73-80, it has been the settled policy of Congress to confine the regulatory authority of the Commission to transportation matters and the Commission was not vested with the power to regulate industrial conditions under the guise of regulating rates. It seems unthinkable that if the Resolution were intended to amend the Act or repeal by implication the limitations therein, by authorizing the Commission to establish rates upon a basis so fundamentally at variance with the established law, such intention would not be clearly and definitely expressed.

As was said by Mr. Chief Justice Marshall in *Post Master General v. Early*, 12 Wheat. 136, 146:

> "That construction which will produce a consequence so directly opposite to the whole spirit of our legislation, ought to be avoided, if it can be avoided, without a total disregard of those

rules by which courts of justice must be governed."

See also the opinion of the court, by Mr. Justice Nelson, in *Wilson v. Rousseau,* 4 How. 646, 678:

"Nothing short of the most fixed and positive terms of a statute could justify an interpretation so repugnant to the whole scope and policy of it, and to wise and judicious legislation."

In *Rosencrans v. United States,* 165 U. S. 257, 262, Mr. Justice Brewer, delivering the opinion of the court, declared:

"* * * where Congress has expressly legislated in respect to a given matter that express legislation must control, in the absence of subsequent legislation equally express, and is not overthrown by any mere inferences or implications to be found in such subsequent legislation."

In *Ex parte Crow Dog,* 109 U. S. 556, 572, it was held that a clear expression of intention of Congress is required to justify a construction of a statute which would constitute a reversal of a general policy of the government as declared in numerous statutes and treaties and recognized in many decisions of the courts.

The Resolution construed by the Commission as authorizing it to adjust industrial and economic conditions through rate making constitutes a delegation of the most arbitrary discretion to the Commission. It would invest the Commission with the power and duty to decide questions of enormous and unpredictable importance upon grounds of pure policy without even an intimation from Congress of a guiding

principle and without the aid of any knowledge gained from experience, actual or vicarious. Power to determine what industries are needy, which of these should be favored and when they should be favored, in order to promote "a natural and proper development of the country as a whole", subject only to the limitation that the favored treatment be consistent with "the maintenance of an adequate system of transportation", is power to determine the fate of whole communities, industries and classes of society. The welfare of vast sections of the country is thus made to depend upon the action of an administrative commission which is required to follow no rule except what in its mind will effect "a natural and proper development of the country as a whole."

The pernicious effect of such assumption of power by the Commission is thus seen by an impartial student and an outstanding authority on this subject. Professor Gustavus H. Robinson of the Boston University Law School, who in an article entitled, "The Hoch-Smith Resolution and the Future of the Interstate Commerce Commission", 42 Harvard Law Review 610, declared:

> "Yet the usefulness of this greatest of commissions is now threatened. It is being burdened with what seems to be an impossible task under present conditions of private ownership of the railroads and prevalent constitutional ideas; and, in addition, it is being politically coerced in its endeavor to fulfill the new duties assigned to it." (p. 612)

* * * * * * * * *

"Its [the Hoch-Smith Resolution's] language sets no definite rule for the Commission to act upon. Possibly it might have been treated by the latter body as a gesture of no importance other than political. The Commission, however, did not so treat it. On the contrary, it sought, with unfortunate results, to put the Resolution into effect." (p. 619)

* * * * * * * *

"The political record of the Commission's attempt to deal with the mandate in the Hoch-Smith Resolution discloses a crisis in its history. The long and useful career of the Commission, together with an increasing legislative and judicial comprehension of its function, had led many to hope that it had been accepted as a national necessity, and that as an institution it had attained a permanent place in the governmental scheme, comparable in a measure to that of the Supreme Court. To such individuals the aftermath of the Commission's effort to follow the Resolution makes sorrowful reading. Those who believe that the Commission is a necessity if present day regulation is to be effective, view the attempt as imperiling all public regulation in the utility field." (p. 631)

It is well settled that a construction of a statute that would occasion great inconvenience, or produce unjust and deleterious results should be avoided if another, more reasonable, interpretation is possible.

Commercial Credit Co. v. Tait, 2 Fed. (2d), 862, affirmed 7 Fed. (2d) 1022;

Carril v. McCaughn, 30 Fed. (2d) 696;

Braffith v. People of Virgin Islands, 26 Fed. (2d) 646.

A partial list of the factors determining the welfare of particular industries will demonstrate that power to favor depressed industries when it will "promote the natural and proper development of the country" is the most vital and extreme power that has ever been delegated an administrative tribunal in the history of this country. Among the factors in the "economic kaleidoscope" (to use an expression of Commissioner Lane, *In re Advance in Rates—Western Case,* 20 I. C. C. 307) upon which the relative prosperity of industries is dependent are the following: (1) the relative skill, acumen, intelligence and industry of owners and operators; (2) relative wage scales in different sections, labor conditions; (3) relative natural advantages, e. g. soil; climate; absence of hail; locusts; drought; contiguity of elements of product; (4) market conditions, e. g. whether or not flooded by over-production; (5) progress of invention, the shift from one method to another, or of one product to a different one, due to inventions, change in styles or manner of living. The selection from among the foregoing list (which is obviously only partial) of the factors justifying assistance by the Commission at the expense of the more prosperous shippers is as completely a decision of a question of the most fundamental legislative policy as can be imagined. We submit that if there are any limits beyond which power cannot be delegated by Congress to an administrative body these limits are exceeded by the Resolution as interpreted by the Commission.

It is unthinkable that Congress intended such a revolution in legislative policy as that attributed it

by the Commission. As said by Judge Parker in *Anchor Coal Co. v. United States*, 25 Fed. (2d) 462, 474:

"So far as the general language of the resolution is concerned, to the effect that the conditions which prevail in industry should be considered in adjusting freight rates, to the end that commodities may freely move, this is no more than a general declaration that freight rates shall be adjusted in such a way as to provide the country with an adequate system of transportation, *and Congress certainly did not intend by this language to create in the Commission an economic dictatorship over the various sections of the country, with power to kill or make alive.* If the Commission has the right in a rate adjustment to consider the shift in traffic to a community already paying a higher rate, and act upon it as one of the factors in still further widening the rate differential, its power to control the economic development of the country is practically unlimited. The shift in cotton manufacturing, fruit growing, in furniture manufacturing, in short in every branch of industry, will become a matter for consideration by the Commission; for all depend upon freight rates, all have rates in which the differential between long and short hauls is narrow, and all experience periods when there are shifts of traffic from one section to another, due to varying industrial conditions. We feel perfectly certain that Congress did not intend to vest such power in the Commission. And the fact that the Commission seemed to consider that the Hoch-Smith resolution required it to consider or give effect to industrial conditions and the shift of traffic, or at least showed a spirit and purpose in that regard which should be deferred to, is of itself sufficient to invalidate the order

complained of. U. S. v. N. Y. Cent. R. R., 263 U. S. 603, 610, 44 S. Ct. 212, 68 L. Ed. 470."

H. Summary.

We submit that the Commission has miscontrued the Resolution, that it has ignored the plain meaning of the provisions thereof and applied the Resolution in a manner never contemplated by Congress. In concluding this phase of our discussion we desire to summarize briefly the effects of the Commission's construction and application of the Resolution.

1. The Commission has treated the Resolution as repealing by implication Section 1 of the Interstate Commerce Act. Under that section the carriers have been required to establish "just and reasonable" rates and this provision has been interpeted by this court as excluding from consideration the prosperity or adversity of either carrier or shipper but requiring the establishment of rates solely in view of transportation conditions. Under the Resolution, as construed by the Commission, the rates must be the lowest possible lawful rates for industries suffering from depression and the highest possible lawful rates for industries enjoying prosperity, regardless of whether the prosperity or adversity is in any way caused by or reflected in, transportation.

In the application of the Resolution the Commission has said that as to industries enjoying prosperity it should prescribe rates "approaching but not exceeding reasonable maxima". This is merely the power to which the Commission is limited by the Act itself. All that the Commission can do under the Act is prescribe

maximum reasonable rates to protect the public against extortion. We are not unmindful of the minimum rate power granted the Commission in 1920, but this is in aid of the power to prevent ruinous rate wars, the dissipation of revenues by unwarranted favoring of particular industries or to preserve relationships found reasonable. The prescription of minimum rates necessarily implies that the carriers may lawfully publish higher rates, but that is specifically prohibited by the order in this case. It is patent, therefore, that the Commission construes the Resolution as changing section 1, so that instead of *all* rates being just and reasonable, two standards are to be applied. Agriculture suffering from depression shall have the lowest possible lawful rates, while other commodities shall have rates fixed by the application of that "discretion which belongs to the power to fix rates" on the basis of either the maximum reasonable rate mentioned in the Act, or something higher. It is immaterial whether the Commission construes the Resolution as authorizing higher rates than would otherwise be applied to prosperous industries; the important thing is that the Commission construes the Resolution as creating two standards of reasonableness where the Act, in section 1, provides a single standard.

2. The Commission reads an implied repeal of section 3 of the Act into the Resolution. That section prohibits discrimination between commodities or localities. In this very case the Commission created such discriminations; e. g., in ordering a reduction of

the deciduous fruit rates because of the unprosperous condition of the producers, notwithstanding its finding that these rates were more favorable to the shippers than the orange rates (R. 32) which were found to be "not too high" (R. 42). Here competing commodities, produced in the same region, transported under similar circumstances, have rates judged by different standards, fixed at different amounts, and the discriminations prohibited by the Act created, solely because the grape growers and other deciduous fruit producers, through overproduction and disorganized marketing and the extensive use of unsuitable, marginal lands, are unable to enjoy the prosperity that a better organized and better conducted industry had been able to attain through the elimination of such uneconomic conditions.

3. The Commission has read and applied the Resolution as repealing by implication section 15 of the Act, under which the Commission's power to change rates fixed by the carriers was limited to those cases where it found the rates so fixed to be unreasonable. It treats the Resolution as authorizing the change of rates wherever they are not the lowest possible lawful rates, defined by it to be rates yielding a slight profit above operating expenses, in cases where the industry, from any cause whatever, is not prosperous. This implied extension of power, too, is to be exercised only for the benefit of certain classes whereas the Act purports to set up a uniform rule to be applied to all alike.

In this connection it should be noted that subsequent to the adoption of the Resolution, Congress, in 1927, amended subdivision 7 of section 15, dealing with the Commission's power of suspension of new rates fixed by the carriers. In so doing, Congress repeated the words formerly contained in the Act, and granted the power of suspension only where the Commission was of the opinion that the new rates might be "unjust or unreasonable". The failure to grant a power of suspension where the newly published rates were not "the lowest possible lawful rates" is persuasive that Congress intended the Resolution to be no enlargement of the Commission's powers as contained in the Act.

4. The Commission construes and applies the Resolution as an implied repeal of section 15a of the Act. While in an earlier proceeding it professed a contrary understanding, in this and subsequent proceedings it has treated the Resolution as authorizing the reduction of any rates on agricultural products suffering from depression where such rates were not the lowest possible lawful rates, as defined by it, whether such rates were reasonable under the Act or not, and despite the admitted fact that the carriers as a whole had signally failed to attain the fair return, fixed by the Commission itself, under rates which it had itself prescribed or authorized. This section imposes an affirmative and continuing duty on the Commission "in the exercise of its power to prescribe reasonable rates". In the absence of an express finding on independent grounds that existing rates are unreasonable under standards

prescribed by the Act, as interpreted by this Court, any reduction of such rates can be justified only on the theory that the Resolution, without any expressed intent so to do, and despite the inclusion therein of words almost identical with those used in section 15a, impliedly repealed that section.

The fundamental principles of the Act, prior to 1920, were the requirements that rates be just and reasonable, to shipper and carrier alike, and that they be uniform in application to all whose traffic was transported under similar circumstances. A fundamental principle of the Transportation Act, 1920 was the affirmative duty imposed on the Commission to insure the preservation of an adequate transportation system by the fixing of rates which would provide a fair return on the value of the property devoted to that important public service. If Congress intended a revolutionary change of these long established and fundamental principles a clear declaration to that effect would naturally be expected. No such intent is stated in the words of the Resolution. Its language is not only consistent with, but requires a contrary interpretation. The Commission has attained its conclusions by implications which do not properly flow from the language employed, contained in a joint resolution addressed only to the Commission and not to the entire nation. Even if such implications naturally existed they would not be favored, if any other interpretation could be given the enactment, since an implied repeal of an established code of law, such as

the Interstate Commerce Act, is never to be favored. There must be a clear and unequivocal expression of the legislative intent to change the law, otherwise the new enactment will be given a construction consistent with the body of law to which it relates. The rule in this regard is stated by Mr. Justice Van Devanter, in *United States v. Barnes,* 222 U. S. 513, 520, as follows:

> "Much of our national legislation is embodied in codes, or systematic collections of general rules, each dealing in a comprehensive way with some general subject, such as the customs, internal revenue, public lands, Indians and patents for inventions; and it is the settled rule of decision in this court that where there is subsequent legislation upon such a subject, it carries with it an implication that the general rules are not superseded, but are to be applied in its enforcement, save as the contrary clearly appears."

II. The Resolution should, if possible, be interpreted in such a manner as will avoid doubts as to its constitutionality. If construed as authorizing and directing lower rates than would otherwise be prescribed solely because of a depression in a given industry and the inability of shippers to conduct their business at a profit, as was done by the Commission in this case, it would be unconstitutional; (1) as a deprivation of the use of private property, transcending the power to regulate interstate commerce; and (2) as being a regulation of industry and not a regulation of commerce.

The Commission, in this case, construed the Resolution as authorizing it to reduce a reasonable rate merely because the deciduous fruit growers in California were suffering from depression. So construed, the Resolution is open to serious constitutional objections. If that construction be proper, the Resolution

would go far beyond the permitted scope of regulation and deprive the carriers of the use of their private property without just compensation or due process of law. It would also be in excess of the powers delegated to Congress itself and therefore incapable of delegation to the Commission, being a regulation of industry and not a regulation of commerce.

A. Where doubts as to constitutional power are raised by one construction of a statute, the court should, if possible, construe it so as to avoid the constitutional question.

In the interpretation of a statute not only should that interpretation be preferred which is consonant with the requirements of the Constitution, but in addition any interpretation which would lead to serious doubts as to the constitutionality of the enactment should be avoided. As stated by Mr. Justice Holmes in *Harriman v. Interstate Commerce Commission,* 211 U. S. 407, 422, it is the duty of the court

> "to construe the statute not merely so as to sustain its constitutionality but so as to avoid a succession of constitutional doubts, so far as candor permits."

The rule was applied in connection with the provisions of the Transportation Act, 1920, under which the Commission has issued an order permitting the abandonment of a certain line of railroad. In *Texas v. Eastern Texas R. R. Co.,* 258 U. S. 204, 217, Mr. Justice Van Devanter, speaking for the court said:

> "If paragraphs 18, 19 and 20 be construed as authorizing the Commission to deal with the aban-

donment of such a road as to intrastate as well as interstate and foreign commerce, a serious question of their constitutional validity will be unavoidable. If they be given a more restricted construction, their validity will be undoubted. Of such a situation this court has said, 'where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.' (*United States v. Delaware and Hudson Company,* 213 U. S. 366, 407-408.)

"Although found in the Transportation Act, these paragraphs are amendments of the Interstate Commerce Act and are so styled. They contain some broad language, but do not plainly or certainly show that they are intended to provide for the complete abandonment of a road like the one we have described * * *. As a whole these acts show that what is intended is to regulate interstate and foreign commerce and to affect intrastate commerce only as that may be incidental to the effective regulation and protection of commerce of the other class. They contain many manifestations of a continuing purpose to refrain from any regulation of intrastate commerce, save such as is involved in the rightful exertion of the power of congress over interstate and foreign commerce. *Minnesota Rate Case,* 230 U. S. 352, 418; *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Co.,* 257 U. S. 563. And had there been a purpose here to depart from the accustomed path and to deal with intrastate commerce as such independently of any effect on interstate and foreign commerce, it is but reasonable to believe that that purpose would have been very plainly declared."

See also:

The Abby Dodge, 223 U. S. 166, 175;
United States v. Delaware and Hudson Company, 213 U. S. 366, 407;
Knights Templars' & Masons' Life Indemnity Company v. Jarman, 187 U. S. 197, 205;
McCullough v. Virginia, 172 U. S. 102, 112;
United States v. Coombs, 12 Pet. 72, 76.

The present case presents a situation requiring the application of these principles. Interpreted as a mandate to undertake a complete investigation of the rate structure of the country, as a direction to revise that rate structure in accordance with existing law, as a direction to do away with the injustices and inequalities that had grown up by reason of its unscientific, piecemeal growth, and in the course of that investigation to give consideration to changes in the relative value of commodities and in the volume of movement thereof, and to give first consideration to any illegalities found in the rates on agricultural products, the Resolution presents no constitutional difficulties.

Interpreted as requiring a different standard of rate making in the case of agricultural products suffering from depression than is applied to other commodities, the Resolution is subject to a succession of constitutional difficulties. So interpreted the Resolution would interfere with the use of the carriers' private property to an extent not permitted by the power of regulation and would compel the carriers to extend to

the public the use of their facilities on terms not contemplated by the original dedication of their property to the service of carriage. It would also amount to a regulation of industrial conditions rather than a regulation of commerce, a power not delegated to Congress itself by the Constitution and therefore incapable of delegation to the Commission.

B. As interpreted by the Commission the Resolution would exceed the proper scope of regulation and be an unconstitutional invasion of the carriers' rights to manage and enjoy their private property.

In any discussion of the power of Congress to regulate the affairs of the carriers it must be kept in mind from the outset that despite the dedication of their property to a public use, thereby subjecting it to certain restrictions and regulation, the railroads are private property, and the power of the government extends only to the protection of the public in its dealings with the carriers. By reason of the private character of the property involved, the power of regulation does not extend to an unlimited interference with the use thereof, based on considerations of general welfare. Subject only to such restraints as may be imposed to protect the public against extortion or discrimination, the railroads are free to adopt their own policies and to manage their own properties in such a manner as to them seems expedient. In the regulation of the carriers the legislature has not the freedom to act on grounds of general welfare or public policy that it has in respect of the Post Office Department or other governmental activities.

Thus, in *Interstate Commerce Commission v. Chicago G. W. R. Co.*, 209 U. S. 108, 118, the court, by Mr. Justice Brewer, declared:

> "It must be remembered that the railroads are the private property of their owners; that while, from the public character of the work in which they are engaged the public has the power to prescribe rules for securing faithful and efficient service and equality between shippers and communities, yet in no proper sense is the public a general manager."

In *Northern Pacific Ry. Co. v. North Dakota*, 236 U. S. 585, 595, the court, by Mr. Justice Hughes, declared:

> "The general principles to be applied are not open to controversy. The railroad property is private property devoted to a public use. As a corporation, the owner is subject to the obligations of its charter. As the holder of special franchises, it is subject to the conditions on which they were granted. Aside from specific requirements of this sort, the common carrier must discharge the obligations which inhere in the nature of its business. It must supply facilities that are reasonably adequate; it must carry upon reasonable terms; and it must serve without unjust discrimination. These duties are properly called public duties, and the State within the limits of its jurisdiction may enforce them. The State may prescribe rules to insure fair remuneration and to prevent extortion, to secure substantial equality of treatment in like cases, and to promote safety, good order and convenience.
>
> "But, broad as is the power of regulation, the State does not enjoy the freedom of an owner. *The fact that the property is devoted to a public use*

on certain terms does not justify the requirement that it shall be devoted to other public purposes, or to the same use on other terms, or the imposition of restrictions that are not reasonably concerned with the proper conduct of the business according to the undertaking which the carrier has expressly or impliedly assumed. If it has held itself out as a carrier of passengers only, it cannot be compelled to carry freight. As a carrier for hire, it cannot be required to carry persons or goods gratuitously. The case would not be altered by the assertion that the public interest demanded such carriage. The public interest cannot be invoked as a justification for demands which pass the limits of reasonable protection and seek to impose upon the carrier and its property burdens that are not incident to its engagement * * *."

See also,

Great Northern R. Co. v. Minnesota, 238 U. S. 340;

Chicago, Milwaukee & St. Paul R. Co. v. Wisconsin, 238 U. S. 491;

Missouri Pacific R. R. v. Nebraska, 164 U. S. 403, 415;

Norfolk & Western Ry. Co. v. West Virginia, 236 U. S. 605, 608.

In *Lake Shore and Michigan Southern Railway Co. v. Smith,* 173 U. S. 684, there was before the court for consideration a statute of Michigan requiring the sale of 1,000 mile scrip books for use within the state at a rate of 2¢ per mile. The legislature had previously prescribed a maximum fare of 3¢ per mile. The question, as the court saw it in that case, is similar in

all essential respects to the question before the court in the instant case (p. 690):

"The question is presented in this case whether the legislature of a State, having power to fix maximum rates and charges for the transportation of persons and property by railroad companies, with the limitations above stated, and having power to alter, amend or repeal their charters, within certain limitations, has also the right, after having fixed a maximum rate for the transportation of passengers, to still further regulate their affairs and to discriminate and make an exception in favor of certain persons, and give to them a right of transportation for a less sum than the general rate provided by law.

"* * * We cannot regard this exceptional legislation as the exercise of a lesser right which is included in the greater one to fix by statute maximum rates for railroad companies. The latter is a power to make a general rule applicable in all cases and without discrimination in favor of or against any individual. It is the power to declare a general law upon the subject of rates beyond which the company cannot go, but within which it is at liberty to conduct its work in such a manner as may seem to it best suited for its prosperity and success. This is a very different power from that exercised in the passage of this statute. The act is not a general law upon the subject of rates, establishing maximum rates which the company can in no case violate. The legislature having established such maximum as a general law now assumes to interfere with the management of the company while conducting its affairs pursuant to and obeying the statute regulating rates and charges, and notwithstanding such rates it assumes to provide for a discrimination, an exception in favor of those who may desire and are able

to purchase tickets at what might be called wholesale rates—a discrimination which operates in favor of the wholesale buyer, leaving the others subject to the general rule. And it assumes to regulate the time in which the tickets purchased shall be valid and to lengthen it to double the period the railroad company has ever before provided. *It thus invades the general right of a company to conduct and manage its own affairs, and compels it to give the use of its property for less than the general rate to those who come within the provisions of the statute, and to that extent it would seem that the statute takes the property of the company without due process of law.* * * *"

The extent of the power of regulation was stated to be (p. 692):

"The power of the legislature to enact general laws regarding a company and its affairs does not include the power to compel it to make an exception in favor of some particular class in the community and to carry the members of that class at a less sum than it has the right to charge for those who are not fortunate enough to be members thereof. This is not reasonable regulation. * * *"

The evil consequences of such discriminatory legislation were pointed out (p. 694):

"If the legislature can interfere by directing the sale of tickets at less than the generally established rate, it can compel the company to carry certain persons or classes free. If the maximum rates are too high in the judgment of the legislature, it may lower them, provided they do not make them unreasonably low as that term is understood in the law; but it cannot enact a law making maximum rates, and then proceed

to make exceptions to it in favor of such persons or classes as in the legislative judgment or caprice may seem proper. What right has the legislature to take from the company the compensation it would otherwise receive for the use of its property in transporting an individual or classes of persons over its road, and compel it to transport them free or for a less sum than is provided for by the general law? Does not such an act, if enforced, take the property of the company without due process of law? We are convinced that the legislature cannot thus interfere with the conduct of the affairs of corporations."

The court showed that such legislation deprived the carrier of property rights contrary to constitutional guarantees, saying (p. 696):

"The legislature having fixed a maximum rate at what must be presumed, *prima facie,* to be also a reasonable rate, we think the company then has the right to insist that all persons shall be compelled to pay alike, that no discrimination against it in favor of certain classes of married men or families, excursionists or others, shall be made by the legislature. *If otherwise, then the company is compelled at the caprice or whim of the legislature to make such exceptions as it may think proper and to carry the excepted persons at less than the usual and legal rates, and thus to part in their favor with its property without that compensation to which it is entitled from all others, and therefore to part with its property without due process of law.* The affairs of the company are in this way taken out of its own management, not by any general law applicable to all, but by a discrimination made by law to which the company is made subject. Whether an act of this nature shall be passed or not, is

not a matter of policy to be decided by the legislature. *It is a matter of right of the company to carry on and manage its concerns subject to the general law applicable to all, which the legislature may enact in the legal exercise of its power to legislate in regard to persons and things within its jurisdiction.*" (pp. 694-7)

The right of the carrier, as owner of private property to do things which it could not lawfully be compelled to do was recognized in these words (p. 697):

"It is no answer to the objection to this legislation to say that the company has voluntarily sold thousand-mile tickets good for a year from the time of their sale. What the company may choose voluntarily to do furnishes no criterion for the measurement of the power of a legislature. Persons may voluntarily contract to do what no legislature would have the right to compel them to do. Nor does it furnish a standard by which to measure the reasonableness of the matter exacted by the legislature. The action of the company upon its own volition, purely as a matter of internal administration, and in regard to the details of its business which it has the right to change at any moment, furnishes no argument for the existence of a power in a legislature to pass a statute in relation to the same business imposing additional burdens upon the company."

The discussion was concluded with this statement (p. 698):

"In this case there is not an exercise of the power to fix maximum rates. There is not the exercise of the acknowledged power to legislate so as to prevent extortion or unreasonable or ille-

gal exactions. The fixing of the maximum rate does that. It is a pure, bald and unmixed power of discrimination in favor of a few of the persons having occasion to travel on the road and permitting them to do so at a less expense than others, provided they buy a certain number of tickets at one time. It is not legislation for the safety, health or proper convenience of the public, but an arbitrary enactment in favor of the persons spoken of, who in the legislative judgment should be carried at a less expense than the other members of the community. There is no reasonable ground upon which the legislation can be rested unless the simple decision of the legislature should be held to constitute such reason. Whether the legislature might not in the fair exercise of its power of regulation provide that ordinary tickets purchased from the company should be good for a certain reasonable time, is not a question which is now before us, and we need not express any opinion in regard to it." (pp. 698-9)

Although this case arose under the Fourteenth Amendment, the reasoning is equally appropriate to the similar language of the due process clause in the Fifth Amendment.

Block v. Hirsch, 256 U. S. 135, 159;
Hibben v. Smith, 191 U. S. 310, 325, 326.

It is true that in the exercise of the power of regulation judgment may be exercised and the same level of rates need not be prescribed for all commodities without regard to their bulk, hazard, value or other transportation characteristics, but this does not impair the reasoning of the decision that the legislature may not discriminate in favor of one class of

users of the railway property as against another, merely for reasons of claimed public policy and apart from recognized distinctions based on transportation matters.

The scope of the decision in *Lake Shore and Michigan Southern Ry. Co. v. Smith, supra,* was limited in *Pennsylvania R. R. v. Towers,* 245 U. S. 6, to the extent that it might be deemed inconsistent with the rule recognizing the right of reasonable classification, but it was cited in the unanimous decision of this court, by Mr. Justice Holmes, in *United States v. New York Central R. R. Co.,* 263 U. S. 603, as illustrating the constitutional difficulties which might ensue from the Commission's interpretation of an Act of Congress requiring the issuance of mileage books or scrip tickets.

The undertaking of the carriers is limited to the transportation of commodities at reasonable rates and without discrimination. They have not dedicated their properties to the upbuilding of local industries. The limit of regulation is reached when the government enacts laws prescribing reasonable rates and preventing discrimination. Of course adequate facilities may be required, and it is recognized that the various kinds of traffic may be classified according to their transportation characteristics, but this does not warrant the prescription of a different and lower standard of rates than is applied generally, merely to benefit certain selected industries or to effect a general public purpose. If the production of grapes and other deciduous fruits in Cal-

ifornia is of sufficient consequence to the "natural and proper development of the country as a whole", and if that industry, due to overproduction or other uneconomic practices, is not self-supporting, the bounty must come from the general treasury rather than from the earnings of the carriers.

It would not strengthen the position of Appellees to contend that the carriers will not be injured because they may be permitted to recoup the loss from deciduous fruits through higher rates on other commodities than would otherwise be permitted. Up to date the Commission has made no effort to replace the $2,700,000 revenue taken from the carriers for the benefit of the fruit growers. Should it attempt to do so the shippers of other commodities could properly insist on their own right to reasonable rates, determined by the cost and value of the service given them. The Commission could not lawfully burden the shippers of other commodities with charges higher than they would otherwise be required to pay in order that the California grape growers might be relieved of a portion of the charges properly apportionable to their traffic, and thereby be enabled to recoup some of the losses sustained from the inevitable operation of economic laws.

In *Northern Pacific R. R. Co. v. North Dakota*, 236 U. S. 585, it was contended that the public policy of encouraging the lignite coal industry justified low rates and that the carriers were not hurt because they were permitted to earn a fair return from their

total traffic, but this court disposed of the contention as follows (p. 598):

> "But, while local interests serve as a motive for enforcing reasonable rates, it would be a very different matter to say that the State may compel the carrier to maintain a rate upon a particular commodity that is less than reasonable, or—as might equally well be asserted—to carry gratuitously, in order to build up a local enterprise. That would be to go outside the carriers' undertaking, and outside the field of reasonable supervision of the conduct of its business, and would be equivalent to an appropriation of the property to public uses upon terms to which the carrier had in no way agreed. It does not aid the argument to urge that the state may permit the carrier to make good its loss by charges for other transportation. If other rates are exorbitant, they may be reduced. Certainly, it could not be said that the carrier may be required to charge excessive rates to some in order that others might be served at a rate unreasonably low. That would be but arbitrary action. We cannot reach the conclusion that the rate in question is to be supported upon the ground of public policy if, upon the facts found, it should be deemed to be less than reasonable."

In *Dayton-Goose Creek Ry. Co. v. United States*, 263 U. S. 456, the recapture provisions of the Transportation Act, 1920 were sustained, and it was held that the shippers could not complain of rates which, while providing more than a fair return for an individual carrier, were necessary to maintain adequate transportation service for the entire group of carriers. In so holding the court recognized that the

shipper was concerned not only with the carrier transporting a given shipment but with the entire system of railroads which were available for his service. So far as the shippers were concerned, the effect of the Act was to treat the entire group of carriers as if they were owned by a single corporation. The private character of the carriers' earnings was recognized, but it was held that as to recapturable income the carrier had received it only in trust for the benefit of the general transportation system. But the decision that the shipper might be called upon to pay rates sufficient to provide a fair return for the carriers as a whole in a particular group is no authority for the proposition that one shipper may be called upon to pay rates higher than required for that purpose in order that other shippers might be relieved of all or a part of that burden, particularly where the only reason for such discrimination is that the favored class of shippers have been less successful in the conduct of their business. If, instead of being devoted to the upbuilding of the transportation system, the recaptured income involved in the *Dayton-Goose Creek case* had been taken to provide free transportation to all persons desiring to ride on that line but not possessing the necessary fare, would the imposition of such excess charges have been upheld?

This court has condemned legislation taking private property for the purpose of giving bounties to private industry. In *Loan Association v. Topeka,* 20 Wall. 655, Justice Miller, in delivering the opinion of the court declared (p. 664):

> "To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms."

And again, referring to the claim that the encouragement of business redounds to the benefit of the people taxed, he said (p. 665):

> "* * * If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizen by forced contributions. No line can be drawn in favor of the manufacturer which would not open the coffers of the public treasury to the importunities of two-thirds of the business men of the city or town."

The evils pointed out in *Loan Association v. Topeka*, supra, would be equally apparent if the Resolution be construed as requiring a reduction of rates below what would otherwise be considered reasonable in order that the production of deciduous fruits might be conducted with greater profit. If the taxes paid by the carriers cannot lawfully be devoted to the payment of bounties to distressed industries, how can they be required to accept less than reasonable rates in order that such industries may be made more profitable? In the first case the taxes are levied on all taxpayers alike,

but in the second case the carriers alone are required to pay the subsidy. As said by Mr. Justice Miller, "This is not legislation. It is a decree under legislative forms."

Under our constitutional system, the sovereign power does not extend to the taking of property lawfully owned, or the lawful profits of property, from one person or group of persons for the advantage of other persons or groups. The imposition upon carriers of the burden of promoting the general welfare is unlike the operation of the post office or other governmental activity, carried on for the public, where deficits may be made good from taxation or other revenues in the public treasury. Those ultimately pay who share the convenience. Even the "common benefit" to the whole community may not be served "at the expense of a single class. The equal protection of the laws—the spirit of common justice—forbids that one class should by law be compelled to suffer loss in order that others may make gain." (Brewer, J., in *Reagan v. Farmers' Loan and Trust Company,* 154 U. S. 362, 410.)

C. The power of Congress under the commerce clause does not extend to the regulation of industrial conditions under the guise of regulating rates, and such power could not be delegated by Congress to the Commission.

It is a commonplace of constitutional law that production is not commerce, that the latter word has to deal with buying, selling or transporting goods, not with making, growing or mining them.

In *United Mine Workers of America v. Coronado Coal Co.*, 259 U. S. 344, 407, Chief Justice Taft said:

> "Coal mining is not interstate commerce and the power of Congress does not extend to its regulation as such."

Neither mining nor manufacturing is interstate commerce, and

> "Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements and persists even though the business be conducted in close connection with interstate commerce."
>
> *Oliver Iron Mining Co. v. Lord*, 262 U. S. 172, 178 (by Van Devanter, J.).

See also:

> *Crescent Cotton Oil Co. v. Mississippi*, 257 U. S. 129, 136;
>
> *Arkadelphia Milling Co. v. St. Louis Southwestern Ry. Co.*, 249 U. S. 134, 148-152.

The fact that Congress cannot under the guise of regulating commerce attempt to control production, or other industrial conditions, was clearly recognized in *Hammer v. Dagenhart*, 247 U. S. 251, where a statute regulating the transportation of the products of child labor was held unconstitutional. Mr. Justice Day said in that case (pp. 271-272):

> "The act in its effect does not regulate transportation among the States, but aims to standardize the ages at which children may be employed in mining and manufacturing within the states. * * *

"Commerce 'consists of intercourse and traffic * * * and includes transportation of persons and property, as well as the purchase, sale and exchange of commodities.' The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped, or used in interstate commerce, make their production a part thereof. Delaware Lackawana & Western R. R. Co. v. Yurkonis, 238 U. S. 439.

"Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation.

" 'When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another state.' (Mr. Justice Jackson in *In re Greene,* 52 Fed. Rep. 113.) This principle has been recognized often in this court. Coe v. Errol, 116 U. S. 517; Bacon v. Illinois, 227 U. S. 504, and cases cited. If it were otherwise, all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the States—a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the states. Kidd v. Pearson, 128 U. S. 1, 21."

And somewhat later in the opinion it is declared (p. 273):

"The grant of power to Congress over the subject of interstate commerce was to enable it to

regulate such commerce, and not to give it authority to control the states in their exercise of the police power over local trade and manufacture."

In conclusion the court says (p. 276):

"In our view the necessary effect of this act is, by means of a prohibition against the movement in interstate commerce of ordinary commercial commodities, to regulate the hours of labor of children in factories and mines within the States, a purely state authority. Thus the act in a twofold sense is repugnant to the Constitution. It not only transcends the authority delegated to Congress over commerce but also exerts a power as to a purely local matter to which the federal authority does not extend. The far reaching result of upholding the act cannot be more plainly indicated than by pointing out that if Congress can thus regulate matters intrusted to local authority by prohibition of the movement of commodities in interstate commerce, all freedom of commerce will be at an end, and the power of the States over local matters may be eliminated, and thus our system of government be practically destroyed."

In *Anchor Coal Co. v. United States*, 25 Fed. (2d) 462, where an order of the Commission was attacked on grounds similar to those here involved, the court said (p. 472):

"As pointed out above, for the Commission to fix rates upon such a basis is for it to assume the task of equalizing industrial conditions through rate adjustments. We do not think that Congress could give such power to the Commission. *Hammer v. Dagenhart*, 247 U. S. 251. * * * We are perfectly certain that it has not attempted to do so. [The Court then discusses the powers of the

Commission under various statutes.] * * * But nowhere is it provided that in doing so the Commission may prefer one section of the country over another, or that it may fix rates, or may prevent the fixing of rates by the carriers, with a view of placing competing producers upon an equality or of compensating for disadvantages under which competing communities may labor. Manifestly such a power is not conferred by the statutes referred to, for rates fixed with such an end in view are not 'reasonable' but are unreasonable and constitute an unprecedented interference with the industrial conditions of the country."

See also

United States v. E. C. Knight Company, 156 U. S. 1, 12, 13, 34.

Kidd v. Pearson, 128 U. S. 1, 20-22;

Coe v. Errol, 116 U. S. 517, 525;

Veazie v. Moor, 14 How. 568, 574.

In *Heisler v. Thomas Colliery Company,* 260 U. S. 245, exemption from state taxation was claimed for anthracite coal mined in Pennsylvania, on the ground that the state tax was a burden on interstate commerce. Justice McKenna, in rejecting this contention, said (p. 259):

"The reach and consequences of the contention repel its acceptance. If the possibility, or, indeed, certainty of exportation of a product or article from a State determines it to be in interstate commerce before the commencement of its movement from the State, it would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals, as

> they lie in the ground. The result would be curious. It would nationalize all industries, it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other states, at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof', wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to States other than those of their production."

The "federal commercial control", which the court rejected in the *Heisler case,* the Commission has adopted in the present case. Reducing transportation rates on their products to encourage the business of the deciduous fruit growers at the expense of the railroads has as little justification as granting an exemption from state taxation of such products under the commerce clause.

It is well established that Congress cannot seek to attain a forbidden end through the exercise of a permitted power. As stated by Mr. Justice McReynolds, in *Linder v. United States,* 268 U. S. 5, 17:

> "Congress cannot, under the pretext of executing delegated power, pass laws for the accomplishment of objects not intrusted to the Federal Government. And we accept as established doctrine that any provision of an act of Congress ostensibly enacted under power granted by the Constitution, not naturally and reasonably adapted to the effective exercise of such power but solely

to the achievement of something plainly within power reserved to the states, is invalid, and cannot be enforced * * *."

See also the opinion of the court, by Mr. Chief Justice Taft, in the *Child Labor Tax Case*, 259 U. S. 20, 37-38:

> "Out of a proper respect for the acts of a coordinate branch of the Government, this court has gone far to sustain taxing acts as such, even though there has been ground for suspecting from the weight of the tax it was intended to destroy its subject. But, in the act before us, the presumption of validity cannot prevail, because the proof of the contrary is found on the very face of its provisions. Grant the validity of this law, and all that Congress would need to do, hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the States have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it. To give such magic to the word 'tax' would be to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the States."

See also,

Hill v. Wallace, 259 U. S. 44, and the dissenting opinion of Mr. Justice Sutherland (with whom concurred Justices McReynolds, Butler and Stone) in *Lambert v. Yellowley*, 272 U. S. 581, 597.

Building up the deciduous fruit industry in California under the guise of regulating interstate commerce is as clearly beyond the power of Congress as the attempt to regulate industry under the guise of taxation condemned in the *Child Labor Tax Case.* That Congress is likewise unable to use its power over interstate commerce for "the accomplishment of objects not intrusted to the Federal government" is expressly recognized by the Court in the *Child Labor Tax Case.* In referring to *Hammer v. Dagenhart,* 247 U. S. 251, Chief Justice Taft says (p. 38):

> "The analogy to the *Dagenhart Case* is clear. The congressional power over interstate commerce is, within its proper scope, just as complete and unlimited as the congressional power to tax, and the legislative motive in its exercise is just as free from judicial suspicion and inquiry. Yet when Congress threatened to stop interstate commerce in ordinary and necessary commodities, unobjectionable as subjects of transportation, and to deny the same to the people of a State in order to coerce them into compliance with Congress's regulation of state concerns, the court said this was not in fact regulation of interstate commerce, but rather that of State concerns and was invalid. So here the so-called tax is a penalty to coerce people of a State to act as Congress wishes them to act in respect of a matter completely the business of the state government under the Federal Constitution. This case requires as did the *Dagenhart Case* the application of the principle announced by Chief Justice Marshall in *McCullough v. Maryland,* 4 Wheat. 316, 423, in a much quoted passage:
>
> " 'Should Congress, in the execution of its powers, adopt measures which are prohibited by the Constitution; or should Congress, under

> the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the government; it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say, that such an act was not the law of the land.' "

If the control of the operations involved in the processes of manufacture is beyond the power of Congress, under the grant in the commerce clause, it must equally follow that the granting of special privileges to certain industries or productive activities is equally outside the power to regulate commerce. To be sure, the legislative power may in the regulation of commerce fix rates for transportation that are just and reasonable; it may prevent discrimination; it may assume a control over transportation, the limits of which are not precisely fixed, but which permit it wide discretion. Where the roads are privately owned, the right of the carrier to his earnings and to the enjoyment of the advantages which he possesses cannot be wrested from him by a direction of the government that he should not continue to receive reasonable rates for his service, merely because it is deemed to be in the public interest to encourage certain industries by giving them lower rates.

The Commission in construing the Resolution as authorizing it to reduce a reasonable rate in order to help the deciduous fruit growers in California has imposed a burden upon particular carriers for the benefit of a particular industry in a particular section of the United States. The equality that necessarily prevails in taxation is set aside and the car-

riers are required to contribute several million dollars annually to the deciduous fruit growers. There is no express power granted to Congress to enact legislation so drastic in its interference with property rights, or so subversive of fundamental principles of equality, and the power cannot be implied from the power to regulate commerce nor exercised under the guise of that power.

Though it has been held that the grant of the power to regulate commerce may include the power to prohibit the transportation of harmful things, like lottery tickets, it has never been held that it authorizes the granting of what are in effect bounties to industries needing encouragement.

In *Adair v. United States,* 208 U. S. 161, the court said, "The power to regulate interstate commerce is the power to prescribe rules by which such commerce must be governed". But in order that the rule may be justified under the grant in the commerce clause, there must be "a substantial connection between the object sought to be attained by the act and the means provided to accomplish that object" (p. 177).

> "Any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the states, must have some real or substantial relation to or connection with the commerce regulated." (p. 178)

In that case, notwithstanding "that some of the relations of railroads with unions of railroad employees are closely enough connected with commerce to justify legislation by Congress" (p. 190), the Erd-

man Act, forbidding, under penalities, a carrier engaged in interstate commerce from discharging an employee because of his membership in a labor union, was held to be beyond the power of Congress to enact.

Though the "affirmative power of Congress in developing interstate commerce agencies is clear" (Taft, C. J. in *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy RR. Co.*, 257 U. S. 563, 590) and though "the authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on" (Hughes, J., in *The Minnesota Rate cases*, 230 U. S. 352, 399), it has never been supposed that its power extends to establishing a system of bounties for "distressed industries", or to reach into the states for the purpose of encouraging business that thereby interstate commerce may perhaps ultimately be increased.

The Commission, in reading into the Resolution a mandate to reduce reasonable rates for the benefit of agricultural products suffering from depression, not only departed from the plain meaning of the terms used in the Resolution but attributed to Congress a purpose which, if it existed, would be plainly in excess of the powers of Congress itself. Those powers, so far as the question here involved is concerned, are to be found only in the Commerce Clause. It has been held by this court, in unmistakable terms, that the power to regulate commerce does not extend to the regulation of industrial conditions, of production, mining, or manufacture. The new standard of rates

which the Commission construed the Resolution to require was dependent wholly on industrial conditions, the prosperity or adversity of the industry, and had no relation whatsoever to commerce. This would transcend the power of Congress itself to as great a degree as the attempt to regulate the employment of child labor, and, as shown by the cases we have discussed, an attempt to exercise such a power cannot be sustained by the pretext of regulating commerce. As held in *Hammer v. Dagenhart,* supra, Congress could not prohibit the transportation of the products of child labor. It is evident that it could not have required the carriers to charge more than a reasonable rate for such transportation. Here a lower rate than would otherwise be prescribed is required in order that the grower of deciduous fruit may attain greater prosperity. The object sought is not within the specifically enumerated powers given Congress by the Constitution, and not being possessed by Congress, it is incapable of delegation to its agent, the Commission.

The language of the Resolution requires no such construction. Its legislative history shows that no such purpose was entertained by Congress. It is the settled rule of this court to avoid any construction of a statute which would render it unconstitutional or even create grave doubts as to its constitutionality, unless the statute admits of no other possible interpretation. We submit that the construction placed upon the Resolution by the Commission, a construction which would make the Resolution effect

a fundamental change in the whole rate-regulating policy of the nation, and which if correct would render the Resolution unconstitutional, was erroneous. The Commission having misconstrued the law applicable, the order based on such misconstruction is void.

III. The rate fixed is confiscatory and violates the Interstate Commerce Act and the Constitution. The Commission intended to fix a rate that would not yield a substantial return, and did, in fact, fix a rate which does not cover the carriers' costs or yield a substantial return.

The new rates fixed by the Commission are confiscatory. They not only do not yield the carrier a substantial return over all proper costs, but such costs will actually exceed revenues by not less than $2.99 per car. If this contention is proved, the order is, of course, void, for the Commission and Congress are without power to deprive the carriers of their property by fixing confiscatory rates.

The petition alleges that the carriers' costs will amount on the average to not less than $470.06 for each car transported, while the average revenue under the new rate will not exceed $467.07 per car, thus leaving a deficit of not less than $2.99 per car (R. 9). The new rates, it is alleged, will entail an actual loss to the carriers of more than $240,000 per annum, and will not allow for any profit (R. 9). In its answer, the Intervener denies that the average cost is $470.06 per car as alleged by the carriers, and alleges that the average revenue will be $480 per car (R. 89). Issues of fact, both as to revenue and as to cost, are thus raised which must be judicially reviewed. It is sub-

mitted that the uncontradicted evidence before the Commission shows that the rate is confiscatory, and that the findings of the Commission in its report sustain the carriers' contention.

A. A rate is confiscatory unless it allows the Carrier a substantial profit.

The Commission, in interpreting the requirement of the Resolution that the rates fixed shall be "lawful", stated that a "lawful" rate was one which "in principle" must be high enough to cover all the costs that may fairly be allocated to the service, plus at least some margin of profit (R. 26). From this interpretation, as well as an examination of the report as a whole, it is evident that the Commission considered a rate lawful, and not confiscatory, if it produced "slightly above the operating expenses" (R. 67).

This construction is erroneous. Rates which produce revenue only slightly in excess of the operating expenses are confiscatory and void.

The carriers are entitled to rates which will yield them their costs of service and substantial compensation in addition.

> "The state is without power to require the traffic covered by the fare enjoined to be carried at a loss or without substantial compensation over its proper costs."
>
> *Banton v. Belt Line Ry. Corp.*, 268 U. S. 413, 421.

See also

Vandalia RR. Co. v. Schnull, 255 U. S. 113.

In *Norfolk and Western Ry. Co. v. West Virginia*, 236 U. S. 605, 614, Mr. Justice Hughes, in an opinion holding void a passenger rate of 2¢ per mile fixed by an act of the West Virginia Legislature said:

> "It is apparent, from every point of view that this record permits, that the statutory rate at most affords a very narrow margin over the cost of the traffic. It is manifestly not a case where substantial compensation is permitted and where we are asked to enter the domain of the legislative discretion; nor is it one in which it is necessary to determine the value of the property employed in intrastate business."

The view at one time urged, that if a rate returned the carrier the out-of-pocket operating expenses, incident to the particular traffic, it was not confiscatory, if the carrier earned a reasonable return upon its property as a whole, has been definitely overruled. It is well settled that each rate must yield not only the out-of-pocket costs incurred by the particular traffic, but a just proportion of the expenses incurred for all traffic of which it forms a part, and in addition yield a substantial profit.

As was said in the *Banton case* (*Banton v. Belt Line Ry. Corp.*, 268 U. S. 413, 421), the cost of service

> "includes not only the expenditures, if any, incurred exclusively for that traffic, but also a just proportion of the expenses incurred for all traffic of which that in question forms a part."

In *Northern Pacific Ry. Co. v. North Dakota*, 236 U. S. 585, 597, the correct rule is stated by Mr. Justice Hughes to be:

"The outlays that exclusively pertain to a given class of traffic must be assigned to that class, and the other expenses must be fairly apportioned."

To escape being confiscatory, therefore, a rate must pay all direct costs, a reasonable apportionment of all general costs, and in addition a substantial profit.

While it is indisputable that a carrier is entitled to earn a substantial return on each rate in excess of all proper costs, the carrier is not entitled to earn exactly the same percentage of return on all the various classes of traffic. The "substantial return" for one class may be less in proportion than the "substantial return" required on another class of traffic. Depending upon various considerations, such as the value of the service to the shipper, the value of the product carried, and other factors, the rate of return on one class of traffic may be less or greater than on others, provided always that the rate yields to the carrier a substantial return in excess of all proper costs.

But a rate may not be reduced below the point where it will return a substantial profit, even though the State or a regulatory body may consider it sound public policy to do so. *Northern Pacific v. North Dakota,* (supra).

These principles, applied to the instant case, require that the rates for agricultural products, including deciduous fruits, must be reasonable rates and must return a substantial profit. The fact that the agricultural industry may be suffering from depression, or that Congress may consider as a matter of public

policy that the rates on agricultural products should be reduced, does not authorize a reduction to a point where the rates fail to yield a substantial return over all proper costs of the particular traffic. It cannot because of public policy, fix a "slightly remunerative" rate, or one yielding "slightly in excess of operating expenses", on the theory that the loss of profit to the carrier may be made up in higher rates on the products of the forest or of the mine. The losses caused by a rate yielding less than a fair return may not be shifted over to other industries to increase their rates beyond what is reasonable.

B. Scope of examination by this Court.

Where, as here, an order fixing rates is attacked as confiscatory, the carriers are entitled, under the due process clause, "to the independent judgment of the court as to both law and facts."

Bluefield W. W. & I. Co. v. Public Service Commission, 262 U. S. 679, 689;

Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287, 289.

See, also:

Northern Pacific Ry. Co. v. Department of Public Works, State of Washington, 268 U. S. 39;

Chicago, Milwaukee & St. Paul Ry. Co. v. Public Utilities Commission, 274 U. S. 344.

The court is called upon by these decisions to examine independently the evidence introduced before

the Commission, and to make its judgment upon those facts, in exactly the same way that a court of equity passes upon facts presented to it in an ordinary suit. It must find in accordance with the weight of the evidence. In this case the task is not difficult, since the report of the Commission shows not only that the rate is confiscatory, but also the misinterpretation of the law and the error in computation by the Commission which caused the fixing of the confiscatory rate.

C. The evidence of confiscation.

The petition alleges that the rates are confiscatory, and in support of this allegation set forth the following (R. 11):

The average revenue per car under the new rates, using the highest rates prescribed in the order, and allowing for the increased minimum weight on grapes permitted thereby, will not exceed	$467.07
The total average operating expenses and taxes per car (without allowing any profit) will be not less than	470.06
The loss per car (without allowing any profit) will be not less than	2.99
On the basis of an annual movement of approximately 80,000 cars, the actual yearly loss (without allowing any profit) will be not less than	240,000.00
The yearly loss in revenue resulting from the new rates will be not less than	2,700,000.00

The petition also shows by appropriate allegation what the cost of not less than $470.06 represents (R. 9). It represents an average operating expense per car, exclusive of taxes and rental of joint facilities, of not less than..$433.68.

It represents taxes, amounting to 8.39% of $433.68, or ..... 36.38.

(This percentage of tax is derived from Exhibit 204 (R. 458) and represents the ratio which taxes bore to operating expenses for the year 1926 for all the railroads in the western district, including the Illinois Central and five principal railroads in the eastern district.)

Or total costs in excess of..... $470.06.

These specific allegations are supported by the uncontradicted evidence presented to the Commission.

It is not often in rate proceedings involving a single commodity that the carriers are able to produce accurate cost records. In this case, however, a cost study covering this particular class of traffic was available and was presented to the Commission. This study (the Conrad study) was accepted by the Commission. The report says (R. 54): "The methods employed in reaching the results seems to be satisfactory." In reaching its conclusion that the old rates were in excess of the lowest possible rates as defined by it, the Commission predicated its conclusion thereon, at least in part. The study was not contradicted by any other evidence of costs. It is upon that study that the allegations of confiscation above set forth are based.

D. The revenues to be expected under the new rates.

The Intervener, California Growers' & Shippers' Protective League, in its answer alleged that the average revenue per car under the new rates will be $480 per annum, instead of the $467.07 alleged by the carriers. The Intervener alleged (R. 89) "that said new rates will produce an average revenue, using the highest rates prescribed in the said order and allowing for the increased minimum weight on grapes permitted thereby, to the carriers approximating $480 per car", and again the Intervener alleges (R. 95) "that the evidence adduced before the Commission shows * * * the authorized increase in the carload minimum weight applicable to shipments of grapes from 26,000 pounds to 30,000 pounds will be followed by an increase in the average load of grapes in an amount somewhat in excess of 30,000 pounds per car, and that such increase in the loading will necessarily substantially increase the average revenue per car."

In the first place it is impossible that the new rate, even with an increase in the average load of grapes to an amount in excess of 30,000 pounds per car, will "necessarily substantially increase the average revenue per car". Intervener forgets that the rates have been reduced. The present average revenue per car is $489.42 as found by the Commission (R. 31). The highest revenue that Intervener even dares to allege is $480.00, a decrease of $9.42 in average revenue per car, instead of the "substantial increase" which Intervener alleges must necessarily follow.

In the second place, while the decreased rates apply to all deciduous fruit traffic,—the increased minimum in car loading applies only to grapes (R. 59).

The question as to what the revenue under the new rates will be is one of fact to be decided by this court. But it is illuminating to see what the Commission thought on the question of what the average loading would be under the new minimum, in view of the Intervener's allegation.

In its Report the Commission says (R. 39):

> "Complainant contends that there has been an increase in the average loading per car, but excluding abnormal years, the loading figures have not changed materially in recent years. * * * Complainant predicts that with an increase in the minimum on grapes to 30,000 pounds, the resultant average load of all deciduous fruits will be increased to something approximating that figure. Whether that result will follow is questionable. It would be necessary that the average loading of grapes be increased to 31,140 pounds to bring the average loading of all deciduous fruits to 30,000 pounds. If the average loading of all fruits remained the same and grapes were loaded to the minimum, the average load would become 29,192 pounds."

From this it is a fair inference that,

(1) The Commission considers it questionable (and therefore improbable) that the average load will increase to 30,000 pounds and this is the figure that must be used to arrive at the revenue of $480 per car, which intervener alleges will result.

(2) The Commission considered 29,192 pounds the proper estimated average load under the new rate. This is the figure petitioners have used to compute the anticipated income and represents an increase of 886 pounds over the present average load per car.

For the purpose of computing the anticipated revenue under the new rates, it is submitted that the basis mentioned by the Commission and used by the carriers is reasonable and proper.

E. Even using the erroneous figures of Intervener, the new rate is confiscatory.

The Intervener claims a gross revenue of about $10.00 per car in excess of the revenues stated in the complaint herein. If its figures were correct (which they are not), the carriers would receive at the maximum $10 per car in excess of their costs;—$10 over costs of $470 per car.

Assuming that the carriers will receive a profit of $10 per car under the new rate, the profit represents that earned by the carriers for transporting a carload of fruit, of an approximate net weight of 15 tons, 2970 miles (R. 20) eastward across the continent and for returning 2400 miles with the empty car (R. 45) (average empty haul of all westbound refrigerator cars), as well as for the further incidental service connected with assembling, re-routing and delivery of freight, the furnishing of expedited service, and the use of expensive and unusual equipment. The average time required in this haul is approximately

thirty days. The cost of such a car is $3194. A 6% return upon the refrigerator car alone for this period of time would be over $15.00. The return of $10.00 is less than 4% on the value of the car while in use, without any return on the roadbed, locomotives or other facilities used in transportation, and without any allowance for the idle time of the car itself. It is not a substantial profit, but a negligible one, and is so low as to violate the constitutional rights of the carriers.

Even if the average revenue under the new rates were the same as that under the old rates ($489.40 per car) the profit over operating costs would be barely sufficient to pay interest on the value of the car while in use on the trip, and would allow nothing to the carriers for the use of their other facilities.

In *Norfolk & Western Ry. Co. v. West Virginia*, 236 U. S. 605, the rates found to be confiscatory yielded 2.5797% above all operating expenses and taxes. Upon the basis of Intervener's unsupported estimate of a revenue of $480 per car a profit of $12.38 per car would be confiscatory under that decision. On Intervener's own showing the profit would be but $9.94, without any allowance for rental of joint facilities.

F. The Carriers' costs.

What does the record before the Commission show as to the carriers' costs? Figures and statistics were introduced by the carriers to show what the costs of the service actually were.

The most comprehensive of these cost studies consisted of a detailed analysis of the actual operating expenses of the Santa Fe Railroad in the year 1923, covering a typical movement. The Commission comments upon this showing as follows (R. 54):

> "No details are given in the cost study so that a check can be made as to the mechanical or clerical accuracy of the result. The methods employed in reaching the result seem to be satisfactory."

The Commission then discusses the manner in which the various items of expense, such as fuel, wages, switching expense, locomotive repairs, etc., were computed and allocated and states (R. 54):

> "Other items were reasonably apportioned to the grape trains."

The carriers' theory was that by ascertaining the costs per car mile for the movement over the Santa Fe, the costs for the average haul of all deciduous fruits could be very closely approximated by applying the same costs to the haul on other railroads. Testimony was introduced to show that the costs for the average haul of all deciduous fruits could be very closely approximated by applying the same costs to the haul on other railroads. Testimony was introduced (R. 482) to show that the haul over the single line of the Santa Fe was probably performed at less cost than the hauls over any of the other routes comprising in each case two or more independent lines. This testimony of the carriers was not contradicted,

nor was it in any way criticized by the Commission in its original report and this basis is recognized as proper in other decisions of the Commission. One of the steps necessary in computing the cost per mile was to estimate and apply the ratio of empty car to loaded car miles, since in the transportation of deciduous fruits, the empty car haul was very greatly in excess of the average empty car haul for other classes of traffic. The carriers' figures showed that the ratio of westbound empty car mileage to total westbound mileage was 81.5% (R. 478), and that the percentage of total empty to total loaded car mileage both eastbound and westbound was 67.58%.

The Commission based the new rates upon an allowance for empty car miles bearing a ratio to loaded car miles of 67.58% (R. 54). The Commission in this manner arrived at a cost to the carriers of $414.02 per car without taxes, rental of equipment or joint facilities (R. 55). After the order was made, the carriers filed with the Commission a petition for reconsideration. One of the grounds urged was that the Commission in fixing the indicated costs at $414.02 a car, exclusive of taxes, had erroneously used 67.58% as the ratio of empty car to loaded car miles, when the proper ratio was 81.5%, and that this error caused an under-valuing of the costs amounting to $20.79 per car.

In its Report on Further Consideration the Commission admits that its action in substituting the lower percentage was erroneous, stating (R. 66):

"In their petition defendants question the propriety of the substitution of the figure of 67.58 for 81.5 as the ratio of empty-car to loaded-car mileage. It is true that this suggestion of a reduction of the allowance for the return of empty cars was unwarranted. The two figures are not comparable. The higher figure is the ratio of the westbound empty-car mileage to the total westbound mileage. The substituted figure represents the ratio of total empty-car mileage both eastbound and westbound to the total loaded-car mileage in both directions."

After admitting that it had made an error in the costs amounting to $20.79 per car, the Commission proceeded (R. 66-67):

"The carriers state that the effect of the erroneous substitution amounted to $20.79 per car, and that if we had merely changed the percentage of empty mileage on the Santa Fe, 68.78 to 67.58, the percentage for all the lines engaged in this traffic, the $414.02 found in the opinion would have become $433.68 per car. This may be compared with revenue, at existing rates of $489.59. The difference, $55.91, would be available for taxes, rental of equipment or joint facilities, and interest, and this difference would not be eliminated by the prescribed reductions, especially if we assume that the increased minimum load would make some increase in the average revenue per car. In other words, even if the cost study were accepted without question, it would indicate that the prescribed rates are slightly above operating expenses and would confirm the impression obtained from comparisons with other rates that the new rates while probably of less than average profitableness, would still leave the traffic attractive to the carriers."

It also finds (R. 68):

> "On the whole record, we adhere to our former finding that the present rates are unreasonable and we are not convinced that the rates prescribed are below what are necessary to afford complainants the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

When the Commission made its original order it was under the belief that the costs as developed by the carriers' evidence and which it took into consideration were $20.79 per car less than they actually proved to be. Notwithstanding its recognition of this error of $20.79 per car in estimating the costs, the Commission adhered to its former decision. How the lowest possible lawful rate fixed at the time the order was originally made, and based on the erroneous estimate of costs by the Commission, can still remain the lowest possible lawful rate when it is proved and admitted that the actual costs are $20.79 per car higher than they were thought to be when the order was originally made, is something of a mystery. The most that the Commission is willing to say in its Report on Further Consideration (R. 67) is that the difference available

> "for taxes, rental of equipment or joint facilities, and interest would not be eliminated by the prescribed reductions, especially if we assume that the increased minimum load would make some increase in the average revenue per car."

And also that (R. 67):

> "* * * even if the cost study were accepted without question, it would indicate that the prescribed

rates are slightly above the operating expenses and would confirm the impression obtained from comparisons with other rates that the new rates, while probably of less than average profitableness, would still leave the traffic attractive to the carriers."

The fact that the difference between operating expense and revenue under the present rates would not be eliminated by the prescribed reductions is not a finding that the rates are lawful or non-confiscatory. A finding that the prescribed rates are "slightly above the operating expenses" is in effect a finding that the rates are confiscatory. The term "operating expenses", as is indicated by the context, does not include taxes or rentals. A rate slightly above operating expenses certainly is not a compensatory rate.

It may be urged that the Commission did not fix the new rates on the basis of the cost study of the carriers. However, it cannot be denied that it took the figures into consideration, for it said in its original report (R. 58):

> "Considering the relative rates on and earnings of the deciduous-fruit traffic in the light of the condition of the industry and of the service performed by the carriers and giving due weight to the cost study presented by defendants, we are of the view that the present rates are in excess of the lowest possible lawful rates as herein defined."

When it found that it had made an error of $20.79 per car, the Commission, in an endeavor to escape the inevitable conclusion that the rate fixed by it was in error to the same extent, said (R. 68): "While

consideration was given to the cost study submitted by defendants, it was not the controlling factor in our decision". Whether it was the *controlling* factor or not, it was admittedly taken into consideration in arriving at the new rate. The evidence as to the cost of service presented by the carriers was the only evidence before the Commission on that subject. Without the use of the carriers' cost study the Commission had no evidence before it upon which to base its finding that the new rates are the "lowest possible lawful rates compatible with the maintenance of adequate transportation service."

In its Report on Further Consideration, the Commission, forced to admit its error in computation, attempted to discredit the carriers' cost study. In its original report, it had specifically approved the "methods employed in reaching the results" (R. 54). The Commission, in its Report on Further Consideration, states (R. 67) that no details were given and consequently no check could be made as to the mechanical or clerical accuracy of the cost study. The record shows that the cost study was presented by a witness who was subjected to cross-examination (R. 483) and that additional information desired was furnished (R. 489). If there was any doubt about the accuracy of the computations, it was the duty of the Commission and of the complainant to demonstrate that fact when the testimony was being introduced. Under the law (Sec. 20 (5) Interstate Commerce Act) the Commission has ample power to investigate the

carriers' accounts, and thus to develop any errors that might exist in their cost study.

The Commission's criticisms of the carriers' cost study, made for the first time in the Report on Further Consideration, are not justified by any evidence and are entitled to little consideration by this court. They are obviously made for the purpose of escaping the conclusion which inevitably follows the error of computation made in the original report. For this inevitable conclusion that the rates are confiscatory results from the fact that the "lowest possible lawful rates", originally fixed by the Commission, rested upon an error of $20.79 against the carriers; they cannot continue to be the "lowest possible lawful rates" after the error is discovered; they must necessarily now be lower than the lowest possible lawful rates. In view of the Commission's own statement that it had undertaken to fix the lowest possible rate within the carriers' constitutional rights, an admitted error of $20.79 per car requires at least an equal increase in the revenue if a substantial compensation is to be afforded. The "due consideration" given the carriers' costs had not changed between the two reports, but the compensation over costs was admitted to be $20.79 per car less than when the irreducible minimum was prescribed. If the profit is admitted to be $20.79 less than the least profit that could be allowed under the Constitution, how can it still be the "substantial profit" to which the carriers are entitled?

An interesting case upon the value of evidence as bearing on the issue of confiscation is *Northern Pacific*

Ry. Co. v. Department of Public Works, State of Washington, 268 U. S. 39, 43. Here the Department of Public Works of Washington established a rate on saw logs in carload lots. In a court proceeding to annul the decree the two principal carriers "presented evidence tending to show * * * that the rates did not defray fully the operating cost of the traffic and its proportion of the taxes payable". Mr. Justice Brandeis said, referring to the cost data:

> "This evidence was in character persuasive. It was fairly specific, direct, and comprehensive. If the facts warranted, the shippers and the public officials might, of course, have shown by evidence of similar character that the carriers' evidence was inherently untrustworthy; or it might have been overcome by more persuasive evidence to the contrary. Little attempt was made to show that any testimony introduced by the carriers was inherently untrustworthy. Little conflict with the evidence of the carriers was developed by the evidence as to specific facts introduced for the shippers and the public. Apparently necessary inferences from specific facts established by the carriers were not explained away. The Department's findings concerning operating costs rested largely upon deductions from data found in published reports of the carriers and in their exhibits filed in this case. Instead of attempting to show by evidence, reasonably specific and direct, what the actual operating cost of this traffic was to the several carriers, the Department created a composite figure representing the weighted average operating cost per 1,000 gross ton miles of all revenue freight carried on the four systems, and made that figure a basis for estimating the operating cost of the log traffic in Washington. This was clearly erroneous."

The same comment might be made on the evidence in this case. The cost evidence introduced by the carriers was in character persuasive. It was fairly specific and direct and comprehensive. If the facts warranted, the shippers and public officials might have shown by evidence of similar character that the carriers' evidence was inherently untrustworthy, or it might have been overcome by more persuasive evidence to the contrary.

From the face of the report of the Commission, it appears:

(a) That the methods employed in determining the carriers' costs were proper;

(b) That the Commission made an error of $20.79 per car in estimating the costs of the carriers, and that it had this erroneous figure before it when it fixed the new rate;

(c) That it is of the opinion that the new rates "are slightly above operating expenses";

(d) That in the opinion of the Commission the new rates "while probably of less than average profitableness, would still leave the traffic attractive to the carriers."

It is submitted that the report of the Commission and the evidence show that the rate fixed is confiscatory, and that the rate fixed was based upon an error in computation necessarily making the new rate at least $20.79 per car lower than it should have been had the Commission not made its error.

SUMMARY.

To recapitulate the contention of the carriers, it is believed that the following positions have been demonstrated:

1. That the Interstate Commerce Commission, in fixing the rate in question, relied entirely upon a supposed mandate to lower existing rates on agricultural products believed to be contained in the Hoch-Smith Resolution.

This fact appears from the face of the Commission's Reports and Orders. It is established:

(a) by the evidence on which the Commission relied in drawing its conclusions;

(b) by the history of the proceeding itself, involving a reversal of a position taken by the Commission only a few months before the present proceeding was instituted;

(c) by the Commission's definition of the issue in the case,—whether the rate assailed "approaches the lowest limit or level of the zone of reasonableness";

(d) by the concurring and dissenting opinions;

(e) by the emphasis laid upon the depressed condition of the deciduous fruit industry;

(f) by the Report and Order on Further Consideration, which finds that the Commission was "not convinced that the rates prescribed are below * * * the lowest possible lawful rates compatible with the maintenance of an adequate transportation service";

(g) by the subsequent references to the opinion herein as based on the Resolution.

2. That even though the order "may have been couched in a form which would cause it, superficially considered" (219 U. S. at p. 443), to appear to involve the determination of the unreasonableness of an existing rate, and the reasonableness of the new rate, in fact it was an order fixing the lowest possible rate conceived to be demanded by the Joint Resolution of Congress referred to.

3. That the Hoch-Smith Resolution was improperly construed by the Commission as requiring it to seek the lowest limit at which a lawful rate could be fixed in a proceeding instituted by shippers for the purpose of having a particular rate reduced as unreasonable.

In fact, the Hoch-Smith Resolution was intended by Congress only as a direction to the Commission to examine the entire rate structure of the country with a view of readjusting rates as an entirety and was intended to have no application to proceedings before the Commission initiated by complaint.

4. That the result of construing the Resolution in the manner in which it was construed and of applying it to proceedings brought on complaint to reduce rates would be disastrous. The race for priorities would result in the most active competition in securing reductions of rates inherently reasonable, because of financial difficulties for which the rates are not shown to be responsible.

5. That the Commission in making the order complained of misconstrued the Hoch-Smith Resolution in other particulars than in respect to its applicability to the sort of proceeding here involved.

(a) It interpreted it as requiring an existing rate to be reduced though not inherently unreasonable;

(b) It interpreted the Resolution as justifying a reduction of rates to the lowest possible limit though the carriers were not making a fair return, and thus treated it in effect as repealing Section 15a of the Interstate Commerce Act;

(c) It misconstrued the expression "freedom of movement" by introducing into words that deal only with transportation matters a meaning involving economic and business problems wholly independent of transportation or the movement of goods;

(d) It viewed the Resolution as requiring it to reduce an established rate complained of, if the shippers showed they labored under financial distress, unless the carriers proved it to be the lowest possible lawful rate;

(e) It considered that its duty under Congressional mandate was to lower an established rate in favor of depressed agricultural interests, merely upon "impressions" and "indications";

(f) It yielded to an assumed command which does not exist in the Resolution to fix the rate at a point where the profit was only "slightly"

above operating expenses and that returned "some" profit, because it believed the lowest possible rate ought to be so fixed under the terms of the Resolution.

6. That the Commission undertook to fix rates pursuant to the Resolution at the lowest possible lawful basis without substantial evidence as to what was the lowest possible lawful rate and erroneously imposed on the carriers the burden of proof that the old rates were the lowest possible lawful rates or that the new rates were less than the lowest possible lawful rates.

7. That the construction given by the Commission to the Resolution raises grave question of its constitutionality. The Commission's construction implies that the Resolution authorizes a subsidy to a depressed industry at the expense of carriers and at the expense of other shippers. These serious questions, involving the whole matter of a federal commercial policy, may be avoided by construing the Resolution as requiring no other or different standard of rate fixing than the Interstate Commerce Act.

8. That the rate fixed is confiscatory, because it does not give the carriers a substantial return over cost properly allocated to the service, but only "some" return or a "slight profit".

9. That the rate was intentionally fixed below the point where there would be a substantial return, because the Commission regarded it as a duty imposed by the Resolution to reduce a rate not unreasonable under the tests adopted and applied in general,

in order to aid the deciduous fruit growers of California.

10. That the Commission after fixing the lowest possible lawful rate, as it conceived it, basing its action in large part upon a cost study, upon a rehearing and reconsideration left the rate so fixed undisturbed, though there was a conceded clerical error of more than $20 per car. In so doing, it necessarily fixed a rate lower than the lowest possible lawful rate.

11. That the finding of the Commission that the new rate is non-confiscatory is not binding on the court since the carriers' petition raises the point and an issue was made on it before the lower court.

12. That the evidence before the Commission shows that the rate is confiscatory.

CONCLUSION.

The questions here involved are legal rather than factual. The reports of the Commission disclose the essential facts relied on. Definite legal propositions are to be passed upon. The applicability of a Joint Resolution of Congress, the construction of that Resolution, the duty of the Interstate Commerce Commission to apply the rules respecting transportation and commerce established by the Interstate Commerce Act, the confiscatory character of the rate fixed under an erroneous reading of a direction given by Congress to a subordinate agency present those "salient circumstances", mentioned by the court in *Illinois Central Ry. Co. v. Interstate Commerce Commission,* 206 U. S. 441, 455, which require a review of the order of the Commission, and an examination of the nature of the power which the Commission undertook to exercise.

It is submitted that Congress by a mere Joint Resolution did not make, or intend to effect, a fundamental and revolutionary change in rate making policy, or upset the principles and plan of railroad regulation that had gradually and painfully developed over more than forty years of experience, trial and error, and which had culminated in the Transportation Act of 1920. Rather does it seem clear that the Resolution is a mere direction to the ministerial officers of the Government to enforce and carry out the provisions of the then existing law so as to give full force and effect to that complete and affirmative policy of regulation prescribed by the Interstate Commerce Act as it has developed through the successive amendments made thereto over a long period of time.

The judgment of the lower court should be reversed and the order made and the rate established by the Commission annulled.

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Receipt of a copy of the foregoing Brief is hereby acknowledged on this.....day of....., 1929.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1929.

No. 7

THE ANN ARBOR RAILROAD COMPANY, et al.,
Appellants,

vs.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION and THE CALIFORNIA GROWERS' & SHIPPERS' PROTECTIVE LEAGUE,
Appellees.

REPLY BRIEF FOR APPELLANTS ON REARGUMENT.

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Washington, October 19, 1929.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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REPLY BRIEF FOR APPELLANTS ON REARGUMENT

At the argument of this case at the past term it was contended in support of the Commission's order that it was made in a "conventional rate case" and that the Commission had, on ample evidence, made "a finding of unreasonableness under section 1 of the Interstate

Commerce Act." This position has now been abandoned by Appellees and it is admitted that the order was based upon the Hoch-Smith Resolution, rather than upon the provisions of the Act. Being admittedly based upon the Resolution the validity of the order turns on the correctness of the Commission's interpretation and application of the Resolution. If the Resolution was misinterpreted or misapplied, the order is void, and it is wholly immaterial what conclusion the Commission *might* have reached upon the same evidence under some other conception of the law, or under a correct interpretation of the Resolution.

Although now admitting that the order was based upon the Resolution it is difficult to determine whether the Appellees contend that the Resolution did or did not change the pre-existing law and if it did change the law, in what respect it made such change. In their Brief on Reargument the Appellees say:

> "The Commission correctly construed the Resolution as requiring it to weigh all the factors normally entering into the determination of the reasonableness of any rate and to fix rates on agricultural products suffering from depression as near the lower limit of the zone of reasonableness as would be compatible with the maintenance of an adequate transportation service." (p. 17)
>
> "The substance of the provision of the Resolution is that agricultural products affected by depression shall in this respect be included in the class of most favored commodities. . . ." (p. 22)
>
> "The Resolution itself, by the use of the words 'lowest possible lawful rates,' recognizes that there may be more than one lawful rate." (p. 24)
>
> "The Resolution, indeed, sets no new standard of lawfulness, * * *(p. 26):

"The amendment in question (involved in the Passenger Scrip Case, 263 U. S. 603) did not, as does the Hoch-Smith Resolution, add anything to the pre-existing law with respect to the determination of a reasonable rate" (p. 35).

"We submit that the Commission properly construed the third paragraph of the Resolution as entering into the prescribed legislative standard for the determination of the unreasonableness of rates on agricultural products suffering from depression and as meaning that a rate above the lowest possible lawful rate compatible with the maintenance of adequate transportation facilities must be deemed an unreasonable rate with respect to such commodities." (p. 36)

"The Commission did indeed give consideration to the economic condition of the industry. . . This discussion would have been germane in any proceeding, and apart from the Resolution, for it bears directly upon the value of the commodity and what the traffic will bear, which, as we have shown, has always been regarded as a legitimate subject of inquiry. Under the Resolution consideration of the economic condition of the industry was necessary to ascertain whether the facts brought the case within the application of the third paragraph of the Resolution." (p. 53)

"Taking the Commission's report as a whole, we submit that it is clear that the Commission did not base its action solely on the depressed condition of the industry. That was only one of the matters considered along with a great many others. It was not error to give consideration to the economic or industrial conditions, along with the other evidence. . . ." (p. 54)

"Indeed the evidence before the Commission in this case would, it is believed, have amply sustained a reduction of rates under Section 1 of the Interstate Commerce Act, even apart from the Hoch-Smith Resolution." (p. 86)

We are unable to determine from these statements whether or not Appellees contend that the Resolution did create any "additional test" or "add anything to the preexisting law with respect to the determination of a reasonable rate." If the Commission, under the Resolution gave only the same consideration to economic conditions that it was authorized (and we add required) to give under the pre-existing law wherein did it add any additional test? If it exercised only its long recognized power to consider the value of the service "along with a great many other" factors, why were the new rates prescribed as the "lowest possible lawful rates" and not as "just and reasonable rates"? What is new in such consideration, and why was it necessary that a special showing be made in order "to ascertain whether the facts brought the case within the application of the third paragraph of the Resolution"? If the Resolution did prescribe an additional test of reasonableness, upon what considerations was it to be applied? If confined to a consideration of the value of the service among other factors wherein was it new? If new or additional weight was to be given that evidence, what other factors were to be disregarded or given less weight, and where is the authority for ignoring or minimizing the effect of such other evidence? Is the new test to be applied in all cases or confined to certain cases, and if so confined what sort of depression would bring the case within the application of the Resolution? Is a depression, accompanied by an increased unit price of an agricultural commodity, within the Resolution or not?

We find no answer to these questions in Appellees' present Brief. We submit that they must be answered in order to determine the proper interpretation of the

Resolution, upon which the order of the Commission is now admitted to be based. As we interpret their arguments, the effort of Appellees is now to make it appear that while the order was based on the Resolution, the Resolution did not authorize any order that was not previously authorized, nor warrant the consideration of any matters not previously proper for consideration, and therefore the "new test" of the Resolution created no new standard. In effect this is to again contend that the order is based on section 1 of the Interstate Commerce Act. The Appellees make no effort to uphold the validity of the order, or the Resolution, assuming that the Commission did anything under the Resolution which would not have been done under the Act.

THE QUESTION

In view of the position now taken by Appellees, there is but one question to be determined in so far as the Hoch Smith Resolution is concerned. That question is,

Was the order merely the fixing of a reasonable rate, giving the due consideration to the value of the service that has always been recognized, or

Was the order made, pursuant to a supposed mandate in the Resolution, to fix the lowest possible lawful rate compatible with the maintenance of adequate transportation service on an agricultural commodity suffering from depression, merely because of such depression, regardless of its cause and irrespective of the extent to which it was reflected in transportation conditions?

Of course the issue of confiscation always remains, regardless of the basis of the order.

The answer to the question just suggested is to be found in the Commissions' reports in this case.

WHAT THE COMMISSION ACTUALLY DID

The original Report of the Commission refers to the Resolution as "primarily relied upon in the instant case" (R. 18).

It refers to the prices received for deciduous fruits as presenting "a fairly accurate index of the relative *prosperity of the industry*" (R. 23).

After mentioning defendants contention that the depression was due not to improper rates, but to overproduction, lack of proper marketing practices and the extensive use of land unsuitable to the production of the commodities, the Report says:

> "While undoubtedly overproduction and distributing practices are factors in the situation, *the essential fact* still remains that the *industry* is in serious financial straits" (R. 25).

and then points to increasing mortgages, tax delinquencies, reduced *net income* as being the evidences of such depression.

Having found as the essential fact, that the industry is unprosperous, the Resolution is considered and interpreted. The Commission concludes that under the Resolution the rates "on agricultural traffic as to which *depression* has been shown *must* be somewhere within the zone of reasonableness permitted by the flexible limits of discretion reposed in us, and that such rates *must* be put as near the lowest limit or level of that zone as is compatible with the maintenance of adequate transportation service" (R. 28). This interpretation

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All italics used herein are ours.

fixed the measure to be applied in the determination of the case. That measure was not that the depression must be considered to the extent that it was reflected in transportation costs or value of service, but that the depression, of itself, forced the prescription of a rate at the very bottom of the zone of reasonableness (*i. e.*, just above the point of confiscation) so far as consistent with the maintenance of adequate transportation service.

Previous decisions of the Commission holding rates on apples from the Northwest to Eastern points not unreasonable were relied on by the carriers. The Commission found these cases to be inapplicable, saying:

> "Defendants refer particularly to the $1.875 rate on deciduous fruits from Washington and Oregon to points in groups A to E, found not unreasonable in the case last cited. Complainants' evidence in that case related principally to economic and trade conditions affecting the marketing of western apples in territory east of the Missouri River, as to which a $1.50 rate was under attach. Moreover, the case was decided prior to the passage of the Hoch-Smith resolution * * *. They would not necessarily constitute precedents against the granting of relief if the same rates were assailed with an adequate showing of changed and different conditions of fact, or in the basic law applicable * * *" (R. 41).

Again, in referring to the rate on oranges which it found to be "at least not too high" (R. 42), the Commission said:

> "Under the Hoch-Smith resolution the relative prosperity of an industry over a period of years

may be considered as well as its relative adversity" (R. 42).

Having considered rate comparisons and operating conditions on defendants' lines the Report then considers the effect of a reduction on the industry and finds that "Assuming that the reduced rate would not be reflected in reduced selling prices, the reduction here sought, * * * would afford substantial relief to the growers, who bear probably the major portion of charges directly or indirectly, and would mean the difference between a loss and a small profit to many of them" (R. 49).

After stating this evidence the Commission proceeds to sum up the effect thereof and to announce its conclusions. We invite a consideration of this summary and conclusion (R. 56-59). When read solely with a view to determining what the Commission did, rather than what it might have done or could have done, we submit that it proves conclusively that the Commission acted not to fix a reasonable rate considering the cost of service, the bulk, value and other transportation matters, but solely because the industry was in a state of depression, the producers were not making a profit and therefore, as the Commission saw its duty under the Resolution, the rates formerly in effect, whether within the zone of reasonableness or not, must be reduced to the lowest possible basis. The finding of ultimate facts and the definition of the primary issue was stated as follows:

> "Complainant has established that the growing of deciduous fruits is one of the great basic industries of California, and that this industry for the past five years has undergone a period of de-

flation and depression. Its economic situation is such that it clearly comes within the terms of the Hoch-Smith resolution as entitled to the lowest possible lawful rates compatible with the maintenance of adequate transportation service. While all the defendants who handle the bulk of the deciduous fruit traffic have not as yet made the fair return, their present financial condition is relatively strong. It seems clear that the reduction requested, if granted, would not affect the maintenance of adequate transportation service. The primary issue to be determined, therefore, is whether the $1.73 rate assailed approaches the lowest limit or level of the zone of reasonableness permitted by the flexible limit of discretion reposed in us" (R. 56).

If the Commission was interested only in the value of the service, as now contended in support of its order,

Why did it first refer to the basic character of the deciduous fruit *industry* and the depression therein (R. 56) instead of finding that the products of that industry were of relatively low value?

Why did it next say that the economic condition of that industry "is such that it clearly comes within the terms of the Hoch-Smith Resolution as entitled to the lowest possible lawful rates compatible with the maintenance of adequate transportation service" (p. 56) instead of finding that by reason of the low value of the products the existing rates were unjust and unreasonable?

Why did it then find that "while all the defendants who handle the bulk of the deciduous fruit traffic have not as yet made the fair return, their present financial condition is relatively strong" (R. 56) since if the old rates were too high in view of the cost and value of the service it was wholly immaterial whether the carriers were relatively

strong or weak, or indeed if they were actually or relatively insolvent?

Why did it proceed to state that "It seems clear that the reduction requested, if granted, would not affect the maintenance of adequate transportation service" (R. 56) since if it was considering only the value of the service, as it had a right and duty to do under section 1, the effect on adequate transportation service could be no ground for failing to reduce an unjust or unreasonable rate?

Why did it consider, in the light of these findings, that "the primary issue to be determined, therefore, is whether the $1.73 rate assailed approaches the lowest limit or level of the zone of reasonableness permitted by the flexible limit of discretion reposed in us" (R. 56-57) rather than define the issue as being whether considering the cost and value of the service and the relation of this to other rates it was unjust or unreasonable?

Why did it name as the first important difference between the record in this case and that in the prior proceeding involving the same rates. "The Hoch-Smith resolution was approved subsequent to the presentation of the prior case" (R. 57) if the Resolution merely directed them to exercise the same power to consider industrial conditions that they previously possessed?

Why did it state as the second important distinction from the earlier case that "The depression * * * has continued unabated * * * and conditions in 1926 were worse than in 1923 * * *" (R. 57) if all it was considering was the value of the commodity and not the profitableness of the industry?

Why was the third difference stated to be "The present economic showing is fully responsive to the terms of the resolution * * *" (R. 57) whereas in the former case not shown over a reasonable period of years, if it was not thought that under the Resolution something different was required

than was pertinent under the Act on the question of value of the commodity and value of service?

Why is a further improvement in the financial condition of the carriers referred to as a distinguishing factor, a fact that would be wholly immaterial if all that was being done was the fixing of a reasonable rate in the light of long-established standards?

Why did it preserve the new rates not as "just and reasonable" but as "the lowest possible lawful rates, etc." if it then thought, as is now contended in support of the order, that the Resolution merely stated "an additional test in accordance with which it should exercise its discretion in determining whether an existing rate on agricultural products should be reduced" and that "it was warranted in finding that any rate which did not accord with that test was unreasonable"? (Brief, p. 33).

Why was it argued in support of the order at the previous hearing in this Court that " * * * the finding of the Commission, that the challenged rates were 'unreasonable', was a finding of unreasonableness under section 1 of the Interstate Commerce Act and not a finding of unreasonableness under a new or different standard" (Brief of Appellees, on original hearing, p. 43) a contention which is now abandoned? If the Appellees are unable to state the basis for the order and offer such inconsistent arguments in support thereof is it not fair to assume that it was wholly without a legal basis, hence representing a mere arbitrary fiat rather than the enlightened and reserved judgment of a "tribunal constituted by law and informed by experience"?

The concurring opinion of Commissioner Eastman shows that the order was based on a supposed new and different standard and not on a mere application of the old rule of value of the service. He says that

"it is by no means clear that the rates in issue are unreasonable and ought to be reduced" but that "complainant is entitled under the Hoch-Smith resolution to the benefit of the doubt" (R., 59). Who will contend that giving the benefit of the doubt to the shippers when it does not appear that the rates are unreasonable is nothing but giving the same weight to the value of the service that the Commission was always authorized, though not required to give? Commissioner Eastman finds that "so far as juice grapes are concerned the California growers apparently dominate the market, and are suffering chiefly from overproduction and competition among themselves" (R., 60). Does this observation fit with the contentions now advanced that the Commission considered only the value of the service and not merely and solely the commercial conditions in the industry?

Commissioner Woodlock in a concurring opinion (joined in by Commissioner Taylor), pointed out that the resolution requires the maintenance of adequate transportation service and said: "If these words mean anything they mean that, broadly speaking, we must shift some of the burden now borne by agricultural products suffering from depression to other classes of traffic, meanwhile maintaining carrier revenues reasonably intact failing evidence that these revenues are excessive" (R., 60). Does this sound as if nothing were being done but fixing reasonable rates in light of the value of the service? He proceeds "The *new standard* of measurement for rates on agricultural products implies *new standards* for rates on other commodities" (R., 60-61). How is this to be reconciled with the Appellees theory that the Resolution merely made mandatory what was previously discre-

tionary, and that the Commission considered only the value of the service just as it had been authorized to do, and doing, for years. This same concurring opinion later says, "The Hoch-Smith resolution is addressed to this Commission, *and not to the carriers.* It is we who must readjust the rate structures according to the terms of that resolution, and we can not shift the burden to the carrier executives" (R., 61). If the Resolution is not addressed to the carriers, and we agree with the Commissioners that it is not, how can the rates be found unlawful because not in conformity therewith? Where is the authority of the Commission to alter the rates fixed by the carrier in the exercise of their discretion in the absence of a finding of unlawfulness? We submit that it is not contained in the Art, which permits the Commission to change the carriers rates only when found to be unlawful and this Court has held that this is a jurisdictional question. (Interstate Commerce Commission vs. Louisville and Nashville R. Co., 227 U. S. 88, 92.) It is not found in the Resolution which authorizes only "lawful changes" to accomplish the objects therein set forth.

We submit that the Commission in this case did not act as it is now contended that it did. It did not consider the depression in the deciduous fruit industry only in so far as reflected in a lessened value of the service, but treated that depression as being the essential factor, regardless of its cause and regardless of the extent to which it reflected in transportation conditions. It treated the Resolution as making mandatory a reduction in rates below what would otherwise be reasonable whenever a depression exists. It did not consider the depression in the deciduous fruit industry from the standpoint of the value of the serv-

ice but as being something wholly apart from transportation and the mere fact of depression in the industry was the actuating force leading to the order in question.

THE COMMISSION HAS CONSISTENTLY CONSTRUED THE RESOLUTION AS REQUIRING IT TO FIX LESS THAN REASONABLE RATES.

Appellees say that the interpretation of the Resolution by the Commission has been clear and consistent. They also say that the Commission under the Resolution has done nothing more than fix rates in view of the value of the service, something it has always been authorized to do. We have shown that in this case the Commission acted with a wholly different conception of its power and duty under the Resolution and fixed the new rates, not as reasonable rates in the light of all pertinent transportation conditions, but as something less than reasonable rates thought to be required by the Resolution merely because the producers were not prosperous and regardless of the causes of that depression or the extent to which reflected in transportation.

This construction and application of the Resolution by the Commission was not due to some inadvertent language in this case but is a part of the clear and consistent policy of the Commission.

In Muller & Co. v. Pere Marquette R. Co., 151 I. C. C. 787, 793, the chicory producers in Michigan were found to be suffering from depression due to increased costs of production and foreign and domestic competition. The Commission said:

"Considering all the evidence of record, it can not fairly be said that the rate assailed is higher than a reasonable maximum rate * * * We therefore find from the evidence that the assailed rate was and is not in excess of a reasonable maximum rate, but that for the future the rate assailed will be unreasonable and in excess of the lowest possible lawful rate compatible with the maintenance of adequate transportation service * * *"

In the light of this finding we submit the Commission does not give the Resolution the interpretation and affect ascribed to it nor does it act in the manner stated by Appellees in their brief.

Again in South Carolina Produce Ass'n. vs. A. & R. R. Co., 152 I. C. C. 5, 27, the Commission clearly indicated that its interpretation of and action under the Resolution is as claimed by us and not as contended by Appellees. It distinguished between the exercise of its ordinary rate fixing power and its idea of the Resolutions as follows:

"Moreover, in view of the fact that the rates which we propose to prescribe will be, in our judgment, the lowest possible lawful rates which may properly be prescribed, under the evidence in this case, such a standard, prescribed for the future, can not be accepted as a standard of reasonable rates in the past. *That resolution directs us to take into consideration the economic necessities of a shipper when fixing a rate structure. Rates made in contemplation of that resolution are less than maximum reasonable rates.* This inevitably follows from the provision of the law. A certain zone of reasonableness is created within the limits of which any rate so falling must be considered reasonable. We can prescribe such a basis for the future; but if we have settled upon the measure of

such a rate taking into consideration the provisions of the resolution, *it is clear that a rate arrived at upon such considerations is not a maximum reasonable one.* If such be true, it is unsound automatically to take a rate found reasonable for the future in the light of the Hoch-Smith Resolution and prescribe it in the past as a basis for reparation, because to do so would be to award damages down to the basis of a rate which admittedly is lower than a reasonable maximum."

In the light of this interpretation of the Resolution by the Commission how can Appellees contend that

> "* * * the Commission properly construed the third paragraph of the Resolution as entering into the prescribed legislative standard for the determination of the reasonableness of rates on agricultural products suffering from depression and as meaning that a rate above the lowest possible lawful rate compatible with the maintenance of adequate transportation facilities must be deemed an unreasonable rate with respect to such commodities" (Brief on Reargument, p. 36).

The actual views of the Commission as manifested in this case and in the later cases to which we have referred are well epitomized in a public address made by Commissioner Meyer, as quoted in The Hoch-Smith Resolution, by Warren H. Wagner, p. 35:

> "Commercial considerations of this character (such as values, risk, competitive articles, etc.) had always been taken into view by the Commission. However, when we were asked to establish rates on the ground that they would permit the applicant to increase his output, to extend his territory, *to increase his profits,* to strengthen his competition, to fortify his location, and similar matters,

generally speaking, we said in one form or another that these were commercial conditions which we were not permitted to give weight in establishing just and reasonable rates under the law. We said that the law restricted us to transportation conditions. Such was our unbroken line of decisions.

"The Hoch-Smith Resolution changed all this. It not only authorizes but it directs us to take into consideration commercial conditions. This in a word is what may be termed the revolutionary effect of that piece of legislation."

The consistent view of the Commission has been that the Resolution requires it to fix rates at the lowest possible level, defined by it to be a point just escaping confiscation (compatible with the maintenance of adequate transportation service) whenever an industry is shown to be suffering from depression, regardless of the cause of that depression and whether or not reflected in transportation. This is not an exercise of any power previously possessed, as often held by this Court. It is not warranted by the terms of the Resolution which refer only to lawful changes and to the consideration of industrial conditions only "in so far as legally possible." It is a misconception of the law applicable, and the decision being admittedly based on the construction it gave the Resolution, the mistake of law renders the order void, regardless of what it might have done under the evidence had it properly applied the law.

Action under the Resolution does not involve an exercise of the Commission's discretionary power to fix reasonable rates.

The Resolution cannot be explained by saying that it called for the exercise of the Commission's discre-

tion in a particular manner, and that it was within the power of Congress to itself prescribe rates, or direct that certain rates be prescribed. When definite action is directed and required, discretion vanishes. The action of the Commission then becomes mandatory and the only inquiry left is under what such circumstances shall the action be taken. It is self-contradictory to then say that the mandatory consideration of the specified condition is but one of several factors entering into the final result. If the factor of depression is to be weighed against other factors it is again a matter of judgment and not mandatory. It then becomes the same test that has always been applied. There is no half-way point. The Resolution either changed the law, in which event depression, regardless of its cause and irrespective of its effect on or reflection in transportation conditions, becomes the sole test and the process of reduction automatic, or it made no change in the law and the Commission must determine what rate is just and reasonable "exactly as in any other case arising out of the Interstate Commerce Act." The former is the interpretation given the Resolution by the Commission when it made the order here involved, and consistently followed since that time. The latter is, we submit, the correct interpretation, and is in effect the only view supported by Appellees in their Brief; but it is not the view which the Commission followed in this case.

What we are concerned with here, is not what the Commission might have done, but what it has done, not what theory can be suggested which would have supported the order, if the Commission had followed that theory, but what theory the Commission did follow.

The action taken under the Resolution is not a lawful exercise of discretion within a "zone of reasonableness"

When the Commission defines the zone of reasonableness as extending from the point of confiscation as a minimum to the point of extortion to the shipper as a maximum, "within which any rate is just and reasonable to the carrier as well as just, fair and reasonable to the shipper" (R., 27-28) it limits its own authority to the fixing of the highest rate within that zone as the maximum that may be charged. While it must exercise judgment in finding that maximum when that judgment is exercised in a legal way, the carrier under the law is entitled to charge that rate and the Commission is without authority under the Act to require it to accept less, even though the lesser charge, as in Southern Pacific Co. vs. Interstate Commerce Commission, 219 U. S. 433, be above the point of confiscation, and therefore within the zone.

It is a contradiction in terms to argue as do Appellees here that there is more than one lawful rate. When the Commission prescribed the rate here under attach as the "lowest possible lawful rate" they by that very term recognized that a higher rate was also a lawful rate. What therefore prevents the carrier from charging that higher lawful rate, since by definition it cannot be a lawful rate unless it is reasonable? The order of the Commission prevents the carriers from charging any more than the lowest rate and therefore the higher rate is unlawful. But the very fact that the new rate is prescribed as the lowest possible lawful rate imports that but for the Resolution a higher rate would have been found reasonable under

the Act, upon consideration of the same economic conditions so far as reflected in the value of the service. What therefore compels the fixing of the lower rate? Obviously it is not transportation conditions. Under the Act it is the duty as well as the right of the Commission to fix rates in the light of the value of the service so long as compensatory rates are provided as a minimum. The fixing of a lowest possible lawful rate necessarily implies that the rate fixed is less than the one which would be fixed on such consideration. The criterion which compels the fixing of the lowest possible rate is the depression or adversity of the industry regardless of its cause and wholly apart from the extent to which it is reflected in transportation. Such was the action taken here and it is just as much an avoidance of the issue to contend now that commercial conditions were considered only in so far as they were reflected in the value of the service, as it was an avoidance of the issue at the previous argument to contend that the order entered in this case was made simply because the rates were found unreasonable under section 1.

The third paragraph of the Resolution adds no substantive provision to the law.

Appellees arguments are predicated wholly upon the third paragraph of the Resolution, as if it were a separate enactment. They contend that our interpretation of the Resolution would render that paragraph meaningless and that by emphasizing the requirements that the changes be "lawful changes" and the rates "lawful rates," i. e., lawful under the pre-existing law, we render ineffective the reference to "lowest

possible" rates. We deny that the third paragraph added any substantive provision to the Resolution. The entire Resolution made no substantive change in the law. It was directory only, and addressed to the Commission only. If any substantive change were contemplated it would have to be directed to the carriers, who publish rates in the first instance. This was not done, and the Commission, in the concurring opinion of Commissioners Wooklock and Taylor, recognized this fact (R. 60). The only effect of the third paragraph was to direct immediate attention to the *existing* depression in agriculture and direct that lawful rates be fixed *with the least practicable delay* on products affected by *that* depression. It did not refer to any future depression or products that might be affected thereby. It was on its face a temporary expedient, not intended to enunciate a principle of substantive law for general application through future years. It cannot be construed as stating any new or additional principle of regulation.

Appellees contend that the third paragraph of the Resolution entered into a 'legislative standard for the determination of the unreasonableness of rates on agricultural commodities suffering from depression and as meaning that a rate above the lowest possible lawful rate compatible with the maintenance of adequate transportation facilities must be deemed an unreasonable rate with respect to such commodities." The proviso requires that pending cases be decided "in accordance with this Resolution." The pending cases in many instances sought reparations for unreasonable charges alleged to have been collected by the carriers on shipments made as long as two years before the filing of complaints. If Appellees are correct in saying that the third paragraph of the Resolution is a legis-

lative declaration of unreasonableness the Commission's duty under sections 1 and 15 of the Act would have been to award reparation down to the basis of the lowest possible lawful rates in all such cases. It is obvious that the suggested interpretation is incorrect.

The Commission itself has refused to carry this theory to its logical conclusion and has held that rates not conforming to its conception of the requirements of the Resolution are not by that fact in violation of section 1 of the Act. South Carolina Produce Assn. v. A. & R. R. Co., 152 I. C. C. 5, 27.

The Resolution can be interpreted consistent with recognized canons of statutory construction only as a whole. It can be so interpreted only as an admonition to the Commission to apply the then existing law and not as declaring new principles of law. So construed it is unobjectionable and subject to no constitutional doubts. No part of the Resolution is nullified by such construction. The third paragraph is given full effect as pointing out a particular industry whose rates, it was thought, violated existing law and saying that since that industry was in hard straits, immediate attention should be given to its rates and where found in violation of the law reduced as quickly as possible. It is thus a specific application of the general rule, to which, in view of an existing emergency, immediate attention is directed. The proviso imports nothing more than a direction to dispose of pending case in accordance with the existing, and unaltered law, and its purpose is merely to avoid any thought that they should be held up until the general investigation of all freight rates should be completed, obviously a task requiring years of effort.

ARE THE RATES CONFISCATORY?

Our contentions are founded on the Conrad cost-study and are discussed in our Brief on Rehearing (pp. 172-191). Appellees seek to reject this evidence as insufficient or unreliable although the Commission in making the order here complained of gave "due weight to the cost-study presented by defendants" (R., 58) and in the Report on Further Consideration said: "While consideration was given to the cost-study submitted by defendants, it was not the controlling factor in our discussion" (R., 68). If it was accepted for any purpose and given any consideration it could only be because it was thought to be adequate and reliable. Having been accepted and considered by the Commission it cannot now be rejected. It was the only evidence of costs before the Commission and was the only possible foundation for the finding that the new rates were the lowest possible lawful rates.

The class of evidence customary in cases arriving under Section 1 of the Act has been held by the Commission to afford "little basis" for the determination of rates under the Resolution, clearly indicating that something other than transportation conditions is considered by the Commission to be contemplated by the Resolution.

In *State of Colorado v. A. T. & S. F. Ry. Co.*, 147 I. C. C. 201, 212, the Commission says:

> "In their briefs and oral arguments complainants claim the benefits of the Hoch-Smith resolution as entitling them to the lowest lawful rates compatible with the maintenance of adequate transportation service. The records in these cases were not particularly presented so as to

> show the particular facts establishing a case for relief under that resolution, but were directed to the establishment of reasonable rates according to the usual standards, and to the curing of alleged undue prejudice to complainants and preference of their competitors. Therefore these records afford little basis for the prescription of the lowest possible lawful rates on this traffic."

Without the cost-study that essential finding is unsupported by evidence and void. If the cost-study was good evidence on that issue it is equally good evidence to show that the rates are confiscatory.

It is now criticised as being made up of estimates and arbitrary allocations of costs not solely attributable to the fruit traffic, except for $55.92 for wages and fuel out of $341.23. The items of wages and fuel were not the only directly allocated expenses as appears from the Commissions report (R., 54). They were the only items on which detailed information was requested by complainant. As to the allocations of other expenses the Commission said: "The methods employed in reaching the results seems to be satisfactory" (R., 54) and after pointing out the direct allocation of items such as wages, fuel, switching, repairs, etc., said that "Other items were reasonably apportioned to the grape trains" (R., 54). The Commission, the expert body to which Appellees attribute practical infallibility in other respects, found the methods satisfactory and the apportionment reasonable and gave due weight to the study in fixing the rates as the lowest possible lawful rates.

It is now criticised as showing costs on only one railroad. Testimony by an expert of admitted repute that it was representative of the conditions on other lines

was uncontradicted. As the Santa Fe was the most prosperous of all the Western lines involved it is evident that this evidence was true. If it was not representative of conditions on the other lines upon what evidence did the Commission find that the new rates were the lowest possible lawful rates on those lines? This Court has recognized the propriety of taking evidence representative of conditions involving many rates and many carriers. (New England Divisions Case, 261 U. S. 184.)

A similar answer may be made to the contention that the study being confined to grapes is not available with respect of the other fruits involved. Grapes constitute the greater part of the traffic. They furnish the greatest carload revenue and load the heaviest. Appellees elsewhere contend that heavy loading commodities are relatively more profitable than those which load more lightly. If so, the relative costs on the other fruits are greater, the revenues therefrom much less and the loss thereon even greater than we contend.

The cost study is criticised as being applied to the weighted average haul, 2,970 miles, although made only on the Santa Fe, for a haul of 2,331 miles to Chicago. The Commission itself thought this was proper and made such a projection. It attempted to correct the factor of empty haul (a correction later admitted to have been in error) and ascertained the average cost per car mile west of Chicago. It then went on, "Applying this cost per car mile to the average weighted haul in 1926, 2,970 miles, gives an indicated cost of $414.02 per car" (R. 55). This was later corrected to $433.68 (R. 67). We can hardly be criticised for relying on a method followed by the Commission and given due weight when it made the order.

Appellees also say the cost-study is objectionable because made in September, 1923, and not covering an extended period of time, and because used at a hearing in 1927. It was contended throughout this proceeding that costs are lowest during the peak period, which occurs in September and October. The representative character of the period chosen for study appears from complainants own showing. Uncontradicted testimony was offered to show the applicability of the 1923 study to 1926 conditions (R. 480-1). The record was made in the case on 1926 conditions, the hearing having been in March, 1927.

In the Report of the Commission on Further Consideration (R. 67-68), other "possible defects" or "questionable" items are referred to. None of these are stated to be real, as distinguished from "possible" objections. Similar doubts were suggested as to these same questions as well as other possible questions in the briefs filed herein at the previous hearing and at the oral argument. As these questions are not repeated, we assume that they have been abandoned. But if still urged we wish to point out that all are based on speculation and conjecture. The size of the exhibit, its time of presentation or the detail which accompanied it are immaterial. It was presented by an experienced accountant, familiar with the problem through long experience. He was subjected to cross-examination and all detailed information desired by the parties was supplied (R. 489). The cost study was accepted by the Commission as being made up by proper methods and allocations (R. 54). It was given due weight in fixing the new rates. If it was suitable for that purpose we may use it to show that the Commission made a rate which fails to return the cost of the service.

The Commission in its original Report fixed the new rate as being the lowest possible lawful rate required by the Resolution. It did this after giving due consideration to the cost study, which it then thought indicated a cost of $414.02 per car, without taxes or rentals of equipment or joint facilities. The lowest possible lawful rate must return all costs, including taxes and a substantial profit, compatible with the maintenance of adequate transportation service. This is admitted by Appellees. As the average revenue under the old rates was but $489.59 it is obvious that after allowance for taxes and rentals the Commission had little or no margin of profit in mind when it ordered a reduction in the rates. We contend that the average revenue under the new rates will be but $467.07 per car. The highest Appellees suggest is $480 per car.

But in finding $414.02 per car as the cost of service the Commission made an error in its calculations. It later admitted the error and found the cost to be $433.68 (R. 67), still without taxes or rentals. We have computed taxes as amounting to $36.38 per car and the cost therefore $470.06, exclusive of rentals. The manner of calculating taxes is explained in our Brief on Rehearing (p. 178) and is not questioned by Appellees. But having admitted an error of approximately $20 per car in its calculations the Commission still adhered to its original order. It still gave "due consideration" to the cost study. It was still attempting to fix the lowest possible lawful rate. The substantial return to which the carriers are entitled under the Constitution had not changed. The amount necessary, over costs, to maintain adequate transportation service had become no less. But the cost of service, whether shown precisely or only approximately was

nearly $20 greater than it was thought to be when the order was made. As the Commission was attempting to fulfill the task of fixing the lowest possible lawful rate and as the starting point for that determination was the cost of service it is obvious that the same rate could not be the lowest possible lawful rate regardless of a difference of $20 per car in the cost of the service. The confiscatory character of the rate is patent from the Commission's own decision and no period of experimentation is necessary or proper before an attack is made on the order prescribing them.

CONCLUSION

The position taken by Appellees in support of the order, permits a definite limitation of the issues herein. By failure to controvert we assume they admit the correctness of these propositions advanced by us,

Under the Interstate Commerce Act the Commission could lawfully consider industrial conditions only to the extent that they were directly reflected in transportation.

The Hoch-Smith Resolution was designed to correct existing illegalities and was not intended to nor did it purport to establish any new principles of rate regulation.

Not even the legislature may require the carriers to transport freight for less than a reasonable rate, nor may the power of classification of commodities be exercised on grounds of public policy alone, but it is confined to a classification based on transportation conditions alone.

Mere prosperity or adversity of a shipper or an industry does not constitute a legitimate basis of classi-

fication, nor may it influence the fixing of rates in any way except as directly reflected in the value of the commodity or the value of the service.

Regardless of the value of the service in no case can rates be fixed which yield less than the cost of service, and in addition a sufficiently substantial profit to contribute fairly, in view of the transportation characteristics of the commodity, toward the fair return required by law.

Congress itself has no power to regulate industrial conditions, but has power only to regulate commerce, and this is the only power that can be delegated to the Commission.

If we have correctly interpreted Appellees position it is in substantial accord with the principles of law which we contend should be applied, as set out fully in our Brief. The only issue is whether the Commission acted as we contend it did. Appellees say that it undertook only to give consideration to industrial conditions as reflected in the value of the service, and along with many other matters pertinent in determining the reasonableness of rates. They say the Commission correctly interpreted the Resolution as directing and authorizing no more than this. While admitting that the Resolution was the basis for the order complained of, they construe it as if nothing were added to the law (as we contend is the proper interpretation). They make no effort to uphold any broader interpretation, nor do they attempt to support any different action by the Commission under its authority than would have been proper without the Resolution.

We contend that in this case, consistent with a policy pursued in all its recent decisions, the Commission has acted, in purported compliance with the Resolu-

tions, as if it directed a reduction in rates to the lowest possible lawful level consistent with the maintenance of adequate transportation service, wherever a depression was shown to exist in an agricultural commodity, without inquiry or regard to the cause of such depression or its effect on transportation conditions. In so doing we say it has made depression the sole test, and the process of reduction automatic. This, we claim, is not in accord with the requirements of the Resolution, and if it were it would be subject to serious doubt as to its constitutionality because not a reasonable regulation of the carriers, and because it would be a regulation of industry, not a regulation of commerce.

We submit that an examination of the reports of the Commission in this case will disclose that it acted precisely as we charge. If it so acted, its order is void because not authorized by either the Interstate Commerce Act or the Resolution and no effort has been made to justify the action which was in fact taken by the Commission, as shown by its reports herein.

Whether the governing law was correctly interpreted and applied or not the actual rates prescribed are shown by the record herein to return less than the cost of the service, and therefore deprive the carriers of the substantial profit to which they are constitutionally entitled.

We submit that the order of the Commission is void and the decree of the lower court dismissing the bill filed to enjoin its enforcement should be reversed.

Washington, October 19, 1929.

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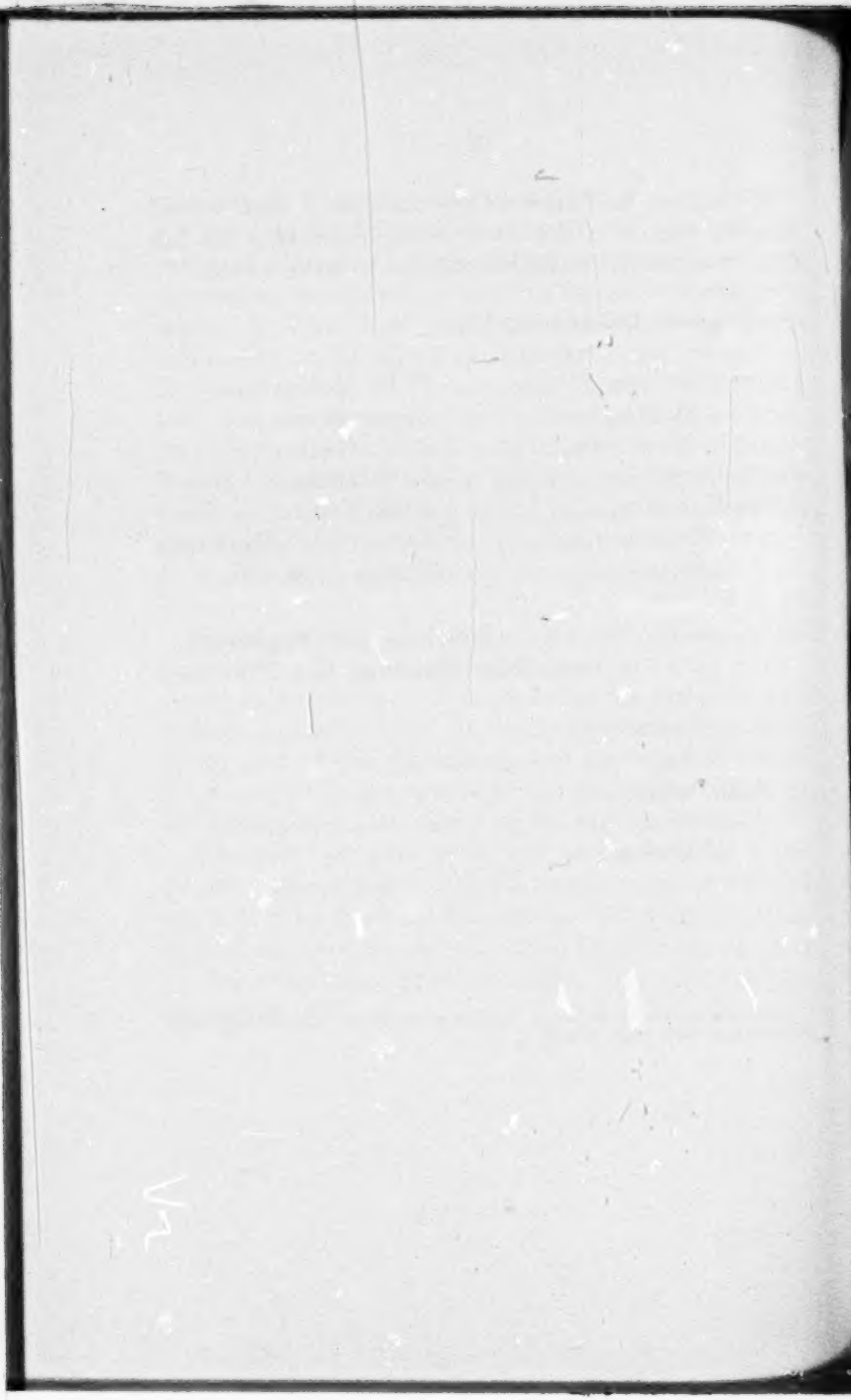

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1928.

THE ANN ARBOR RAILROAD COMPANY, et al.,
Appellants,

vs.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,
Appellees.

No. [redacted]

Brief for
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In the Supreme Court
OF THE
United States

October Term, 1928.

The Ann Arbor Railroad Company, et al., *Appellants*, vs. United States of America and Interstate Commerce Commission, *Appellees*.	No. 273

Brief for California Growers' and Shippers' Protective League, Intervener and Appellee.

STATEMENT OF THE CASE.

This is an appeal from a final decree of the United States District Court for the Northern District of California (specially constituted in accord with the provisions of the Urgent Deficiency Appropriations Act of October 22, 1913—38 Stat. L. 219) dismissing appellants' bill to enjoin the enforcement of an order of the Interstate Commerce Commission. The order of the Commission which appellants sought to have annulled required them to effect

certain reductions in rates for the transportation of fresh deciduous fruits, other than apples,[1] in carloads, from points in California to destinations in transcontinental rate groups A to M, inclusive. These lettered groups comprise the territory extending from Colorado Common Points—e. g., Denver, Cheyenne, Pueblo, etc.—to the Atlantic seaboard. The rate of $1.73 per hundred pounds,[2] with a carload minimum of 26,000 pounds, then in existence from California to points in Groups A to M, except Group J, was required to be reduced to $1.60, with a carload minimum of 30,000 pounds in the case of grapes and 26,000 pounds in the case of other fruits. Correspondingly, the rate of $1.62 to Group J (Colorado Common Points) was reduced to $1.50, with similar changes in the carload minima.

The rates prescribed by the Commission's order, together with the increased carload minimum on grapes, were established on February 10, 1928, and are still in full force and effect.

This brief is presented in behalf of the California Growers' and Shippers' Protective League, the intervener in this cause and the complainant in the proceeding before the Commission. Pursuant to the statutory provisions (Commerce Court Act, 36 Stat. L. 539, and Urgent Deficiency Appropriations Act, 38 Stat. L. 219) and to leave granted by the District Court (R. 70; 74), the California Growers' and Shippers' Protective League was allowed to intervene in behalf of the defendants.

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[1]The term "deciduous fruits" as used throughout this brief shall, unless otherwise expressly stated, mean "fresh deciduous fruits, other than apples".

[2]Rates are stated throughout this brief in dollars and cents per hundred pounds.

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FOREWORD.

A.—Relation of Prescribed Rates on Deciduous Fruits to Rates on Other Perishable Commodities in California Rate Structure.

In order that the rates fixed by the Commission may appear in proper perspective, it is essential to view them in relation to the entire rate structure on fruits and vegetables from California to transcontinental destinations. To this end we reproduce herewith from page 35 of the Commission's report (R. 39) a table showing the rates on "the principal fruits and vegetables that move from California to the East". (For the purpose of convenient comparison, we have interpolated the rates prescribed by the Commission's order.)

COMMODITY	From California points to groups— A[1]	B[1]	C[1]	D,E	F,G,H	J	Minimum weight
	Cents	Cents	Cents	Cents	Cents	Cents	Pounds
Deciduous fruits							
Rates complained of	173	173	173	173	173	162	26,000
Rates prescribed	160	160	160	160	160	150	*30,000 †26,000
Apples	150	150	150	150	150	141	[2]31,000 [3]35,000
Oranges	155	155	155	155	155	155	36,000
Lemons	150	150	150	150	150	141	26,200
Fresh vegetables (pkgs.)	175	173	165	146	139	134	20,000
Melons	175	173	165	146	139	134	20,000
Cantaloupes	175	173	165	146	139	134	20,000
Vegetables (bags)	151	135.5	128	110	110	106	30,000
Cabbage, fresh (crates)	151	135.5	128	110	110	106	24,000

*Increased minimum weight on grapes.
†Minimum weight on tree fruits.
[1]Rates to Groups K, L and M are the same as to points in Groups A, B, and C, respectively.
[2]Cars under 32 feet 9 inches.
[3]Cars 32 feet 9 inches and over.

A comparative rate appraisal requires the consideration of such elements as minimum carload weights, average

loading, average length of haul, traffic volume, and value of commodities. The weight to be accorded such factors is properly within the discretion of the Commission. The Court is not concerned with the technical aspects of rate making, which proceeds from the exercise of a legislative function. Our immediate purpose is merely to show that the former rates on deciduous fruit were relatively higher than the rates on other perishables and that the prescribed rates are not out of harmony with the general rate structure. In point of fact, the prescribed rates are still comparatively high.

B.—Compensating Effect of Increased Minimum Carload Weight on Grapes.

Note should also be taken of the fact that the effect of the rate reduction on carload revenue was largely offset by an increase in the minimum carload weight on grapes. Concurrently with the establishment of the lower rates, the Commission authorized an increase in the minimum carload weight on grapes from 26,000 pounds to 30,000 pounds. *In brief, the freight rate was reduced by 7½%, while the minimum weight was increased by approximately 15½%.*

The compensating effect of the advanced minimum is of material importance. *The prior rate of $1.73 in conjunction with the 26,000-pound minimum yielded a minimum carload revenue of $449.80. The prescribed rate of $1.60 in conjunction with the new minimum of 30,000 pounds will yield a minimum carload revenue of $480.*

The preceding computation is upon the basis of minimum weights. In order to obtain a more exact criterion, con-

sideration must of course be given to average car-loading. Grapes represent approximately 80% of the entire deciduous fruit movement from California. It appears from the Commission's reort that in 1926 the total deciduous fruit movement required 74,456 cars, comprising 58,334 cars of grapes and 16,122 cars of tree fruits. (R. 19; Carriers' Exhibit No. 166, R. 412; see also brief of appellants, p. 9.) The average loading of all deciduous fruit in 1926 was 28,306 pounds. The loading of tree fruits only was 26,368 pounds. (R. 31; Exhibit No. 166, R. 412.) It is certain that the average loading of grapes will appreciably exceed the newly established 30,000-pound carload minimum. Witnesses for the complainant before the Commission testified that the average loading af grapes would approximate 31,000 pounds per car. (R. 169-170, 241, 244.) Assuming that the average loading of tree fruits will remain at 26,368 pounds as in 1926, a weighted average of the whole should approximate 30,000 pounds per car. (R. 241.)

The carriers' average revenue from the deciduous fruit movement in 1926 was $489.42 per car. The average revenue at the prescribed rate of $1.60 and an average loading of 30,000 pounds per car will be $480. *It therefore appears that the indicated reduction in carload revenue occasioned by the Commission's order is but $9.42 per car, or less than 2%.* The revenue effect of the Commission's order is thus found to be quite nominal.

* * * * * * *

These features have been placed in the foreground in order (1) to preclude any impression that the rates fixed

by the Commission represent a departure from conventional rate-making practice, and (2) to show that the rate reduction was in large measure offset by a concurrent increase in the minimum carload weight on grapes which preserved the carload revenue against appreciable impairment.

* * * * * * * *

It will be our endeavor to show that the Commission's order has proceeded from the legitimate exercise of its rate-making power, that the Hoch-Smith Resolution (43 Stat. L. 801, U. S. C., Title 49, section 55) has been properly construed by the Commission and that as so construed the Resolution is valid, that the rates prescribed by the Commission have not been shown to be confiscatory and that the findings of the Commission are fully sustained by the record.

I.

NORMAL EXERCISE OF RATE-MAKING POWER BY THE COMMISSION.

The Commission found the prior rates unreasonable, in violation of Section 1 of the Act, and prescribed rates for the future in accordance with approved and accepted rate-making standards.

Preliminarily, we desire to place in parallel the averment of the bill as to the Commission's construction of the word "unreasonable" and the language actually employed by the Commission in the construction of that term.

The bill charges that the word "unreasonable" as used by the Commission in its report (paragraph XI, R. 9)

> "does not refer to the test of reasonableness prescribed by law and by Section 1 of the Interstate Commerce Act, but refers instead to the mistaken and erroneous belief of the Commission that the Hoch-Smith Resolution creates a new and different standard of reasonableness * * *".

The Commission has not so held. The Commission says, quoting from a prior report in which the resolution was considered, (R. 26)

> "It (the resolution) sets no new standard of lawfulness, but provides, in effect, that to the extent that there are flexible limits to our discretion, we shall require the maintenance of the lowest rates falling within those flexible limits."

Moreover, the Commission expressly recognizes the controlling authority of Section 1 and other provisions of the Act (R. 27) and that, in prescribing rates for the future, it must hold to the "zone of reasonableness within which any rate is just and reasonable to the carrier as well as just, fair and reasonable to the shipper that utilizes the carrier's services". (R. 27, 28).

The appellants contend in their bill and upon the brief that the Commission did not find the previously established rates unreasonable under the provisions of Section 1 of the Interstate Commerce Act, but "based its action upon a supposed mandate found in certain language of the Hoch-Smith Resolution". (Brief of appellants, page 2). In different phrase, it is asserted that "The Commission construed the resolution as requiring it to reduce an existing rate on agricultural products, notwithstanding that the existing rate was reasonable, and otherwise lawful." (Brief of appellants, page 25).

The claim that the Commission disregarded Section 1 of the Act and that the order transcends its statutory authority is advanced in different allegations of the bill and is conveyed in varying terms by several assignments of error (Assignments Nos. VII, VIII, IX, X, XI, XIII, XIV, XV, XVI, XXXVIII, XXXIX, XL, XLVI, XLIX and LII—R. 111-125). In essence, a single issue is raised by these assignments, viz., the nature of the rate-making authority exercised by the Commission. We propose to meet that issue by a review of the complaint, the record before the Commission and the Commission's report.

a. The Complaint before the Commission.

The text of the complaint is reproduced upon pages 130-148 of the Record, both inclusive. The complaint alleges that the rates assailed are in violation of Sections 1 and 3 of the Interstate Commerce Act and of the principles declared in the Hoch-Smith Resolution. Paragraph VIII of the complaint (R. 146) recites that the rates are:

> "* * (1) unjust and unreasonable, in violation of Section 1 of the Interstate Commerce Act as amended, and (2) unduly and unreasonably prejudicial, in violation of Section 3 of said Act, and (3) higher than the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and upon an unjust and unreasonable basis with relation to other rates, in violation of the joint resolution of Congress (S. J. Res. 107) commonly known and designated as the Hoch-Smith Resolution."

(Doubtless it is understood that the complaint was directed against rates which rested substantially at the war-time peak, despite the downward trend in the general rate structure and notwithstanding the material recession in

railway operating costs. It was the complainant's contention that the rates were unjust and unreasonable per se, that they imposed a disproportionate burden upon the deciduous fruit industry, and that their further maintenance threatened a curtailment of traffic to the prejudice of shippers and carriers alike.)

The complainant invoked the rate-making policy set forth in the Hoch-Smith Resolution. This was in aid of its attack upon the rates under the governing provisions of the Interstate Commerce Act. In proper course we shall show that the rate-making policy which finds expression in the Resolution is not novel and that it conflicts neither with the provisions of the Act nor with constitutional restraints.

b. The Record before the Commission.

It is but a statement of fact that by far the greater part of the hearing before the Commission was taken up in the receipt of evidence of the conventional character bearing upon the reasonableness and lawfulness of the rates. True, the complainant undertook to develop the economic importance of the deciduous fruit industry to the State of California and to the carriers which serve it, the severe depression which had descended upon the industry and the inability of the fruit growers longer to bear the burden of the existing freight rates. This economic showing was responsive to the Resolution, but it would have been proper and relevant alike if the Resolution had never existed. Economic elements are common to major rate cases. It is essential that the Commission shall know, in the interest

of shippers as well as carriers, the economic conditions which prevail in the particular industry in order that its rate-fixing functions may not be blindly administered. Without a full development of economic facts, the Commission could not exercise its authority advisedly within the "flexible limits of judgment which belongs to the power to make rates". In order to determine the proper measure of rates within those limits, the Commission must not be kept in ignorance of industrial conditions and economic needs.

Following the introduction of evidence of an economic character, the complainant undertook to establish the unreasonableness of the rates under Section 1. A comprehensive rate showing was made. The record contains seventy-six rate exhibits, of which fifty-one were offered for the complainant and twenty-five for the defendants. In addition, the record includes numerous exhibits of a traffic, operating and financial character. A mass of testimony was introduced, directed to the circumstances of traffic and of transportation. The volume of the movement, its essentially train-load character, its extraordinary persistence and the fact that it moves largely in the late summer and early fall when seasonal conditions are most conducive to minimum unit costs were fully developed. These and other factors responsive to the requirements of an important rate proceeding were presented with great elaboration on the part of the complainant and the defendants alike. The case was tried essentially as a rate case.

We shall not burden this brief either with a digest of the record or with a technical discussion of the evidence

directed to the reasonableness of the rates assailed. A catalog, in summary form, will suffice to disclose the nature and scope of the showing.

1. Rate history. (R. 229-230, Exhibit No. 28.)
2. Rate comparisons.
   a. Rates on deciduous fruits compared with rates on apples, oranges, lemons, cantaloupes and fresh vegetables. (R. 230-237, Exhibits Nos. 29-31.)
   b. Percentage increase in rates on deciduous fruits above prewar level (50.4%) compared with percentage increases in general level of eastbound transcontinental, westbound transcontinental and Mountain-Pacific rates (29%, 22% and 25%). (R. 237-242, Exhibits Nos. 32-39.)
   c. Comparison with increases in express rates on deciduous fruits from California to eastern destinations. (R. 199-203, Exhibits Nos. 8, 9, R. 241.)
   d. Comparison with rates on bananas, cocoanuts and pineapples. (R. 245-257, Exhibits Nos. 62-72.)
3. Circumstances of traffic and transportation.
   a. Fruit loaded in refrigerator cars and assembled into fruit blocks or trains at concentrating points. (R. 205-207, 329, 331, 373, 404, 408.)
   b. Movement during season of highest traffic density and lowest unit operating costs. (R. 241-242, 350, 403, 408.)

c. Essentially main line service. (R. 205-207, 332, 345, 350, 373, 380, 381, 404.)

d. Service relatively less expensive than in prior years. (R. 207-209, 331, 344, 376, 495, 496, 498, 503, 504.)

e. Lengthened fruit train schedules. (R. 207-209, 242, 331, 376.)

f. Increase in average tonnage per train. (R. 209, 331, 372.)

g. Increase in volume of movement. (R. 223-225, Exhibits Nos. 22-23, R. 409.)

h. Effect of tendered increase in carload minimum weight on grapes. (R. 169, 170, 241, 244.)

4. Financial condition of carriers. (R. 197-198, Exhibits Nos. 5-7; R. 242-243, R. fol. 346-391, Exhibits Nos. 40-61; R. 258, Exhibit No. 204.)

a. Improvement in carriers' earnings and recession in operating costs.

b. Decline in various unit costs of operation and maintenance.

Even a cursory review of the transcript will compel the conclusion that the case was presented primarily as a rate case, and that the economic showing responsive to the Resolution played a distinctly secondary role.

c. The Report of the Commission.

The report of the Commission, reproduced upon pages 16 to 59 of the transcript, may next be considered.

Following an introductory statement of the facts (R. 17-22) the Commission reviews the evidence bearing upon

the importance and economic state of the California deciduous fruit industry (R. 22-26). The Commission then considers the terms of the Resolution, concludes that "It sets no new standard of lawfulness", that the rates established must not run "counter to the provisions of the Interstate Commerce Act and the carriers' rights under the Constitution" and "must be somewhere within the zone of reasonableness permitted by the flexible limits of discretion reposed in us". (R. 26-28.)

The remainder, and by far the bulk, of the report, comprising the text from pages 28 to 57 inclusive of the record, is given over to a review of the evidence bearing directly upon the inherent reasonableness of the rates assailed. Without engaging in technical discussion, we may yet offer a brief summary in order to make it clear that the rates under attack were tested by accepted rate-making principles.

The Commission reviews the history of the rates on deciduous fruits from California to eastern defined territories (R. 28); a mass of rate comparisons offered by complainant (R. 29-38) and defendants (R. 39-43); traffic and transportation conditions surrounding the movement of deciduous fruits, such as the volume of the movement (R. 38), its seasonal nature (R. 38-39), the average loading (R. 39), the trainload character of the movement (R. 39), and the operating conditions encountered (R. 39, 43-44). The Commission likewise considers the character of the service performed by the carriers, including such matters as the method of handling the traffic (R. 43), the schedules under which it moves (R. 44-45), the cost of refrigerator equipment (R. 45), comparisons of the ratios

of the weight of the equipment to the weight of the paying load of various commodities (R. 45), the empty car haul involved (R. 45), the number of refrigerator cars provided for this movement (R. 45-46), the storage of empty refrigerator cars (R. 46), the extent of loss and damage claim payments (R. 46), special services at terminals (R. 46-47), and diversions and reconsignments (R. 47). Consideration is likewise given to evidence bearing upon the carriers' expenditures for wages, supplies and repairs (R. 47-48).

The Commission next addresses itself to "freedom of movement" and undertakes to determine the effect of a reduction in transportation charges (R. 48-49). In order to ascertain whether a rate reduction will be "compatible with the maintenance of adequate transportation service", an analysis is made of the operating returns of the carriers over a period of years (R. 49-51) and the rates of return on the carriers' property investment accounts (R. 51-53). Passing to cost of service, the Commission analyzes, but is unable to approve, certain cost studies offered by the carriers (R. 53-55). The status of the deciduous fruit industry in other parts of the country is considered and the conclusion is reached that no prejudice will be worked through a reduction in the rates from California (R. 55-56).

We repeat that *the Commission's report gives far more space to the treatment of the rate exhibits, the rate testimony, traffic and transportation conditions, the engineering and operating testimony and other evidence addressed to the reasonableness of the rates, than it gives to any other feature of the case.* If the Commission was not concerned with testing the reasonableness of the existing rates

under Section 1 of the Interstate Commerce Act, it is difficult to see why it should have devoted one-half of its original report to a discussion of matters which pertain only to the question of the reasonableness of the existing rates in accordance with accepted rate-making principles. (R. 28-48). If, as the appellants contend, the only issue was whether the existing rates were the "lowest possible lawful rates compatible with the maintenance of adequate transportation service", all of this discussion would have been irrelevant. Certainly the fact that the Commission took all of these matters into consideration indicates that the existing rates were properly tested by the ordinary standards of reasonableness under Section 1 of the Act.

It is impossible to review the report and yet avoid the conclusion that the Commission has given the major part of its attention to the consideration of evidence of the conventional type bearing directly upon the propriety of the rates assailed and upon the measure of the rates to be prescribed for future application. All essential elements of a comprehensive record were painstakingly reviewed and, exercising the discretion conferred by the Act, the Commission reached the conclusion that the existing rates were too high.

d. The Finding of Unreasonableness.

The appellants insist that there is no proper finding of unreasonableness in the report. In answer we quote the final paragraph of the report (R. 59):

> "We are of the opinion and find upon a consideration of the whole record that the rate of $1.73 as applied to the transcontinental shipment of deciduous fruits from California to Groups A to M, inclusive,

except Group J is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.60; and that the rate of $1.62 currently applicable to Group J points is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.50 and that such rates are the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and are necessary to promote the freedom of movement by defendant of the specified products of agriculture, now affected by existing depression in agriculture. In publishing these rates defendants may increase the carload minimum on grapes to 30,000 pounds."

Responsive to the carriers' petition for reconsideration the case was again taken under advisement. In its report upon further consideration the Commission said (R. 68):

"On the whole record, we adhere to our former finding that the present rates are unreasonable and we are not convinced that the rates prescribed are below what are necessary to afford complainants the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

The appellants criticize this phrasing and insist that it was for the Commission to be convinced that the rates assailed were unreasonable. It is furthur argued that the Commission thereby placed upon the carriers the burden of justifying their tariff rates. This is not a correct appraisal of the Commission's action. In reply it will suffice to say that the clause last quoted does not appear in the original report but was responsive to a petition for reconsideration. No similar statement can be found in the original report. It was entirely proper for the Commission to say, *in response to the carriers' petition for re-*

consideration, that the carriers had failed to convince it that the rates prescribed were unduly low.

The statute does not prescribe that the finding of the Commission shall be in any particular form. It will be found, however, upon reviewing the initial report together with the supplemental report that there are express and sufficient findings of unreasonableness, predicated upon a careful and conscientious review of the record, and that the burden of justifying established rates was not imposed upon the carriers.

e. Distinctions between First and Second Proceedings before the Commission.

The appellants seek to find some significance in the fact that the conclusion reached by the full Commission in the instant case differs from the conclusion reached by a division of the Commission in the proceeding instituted by the same complainant which was heard in 1923, but was not decided until 1925. There is no doctrine of *res judicata* in rate proceedings. The Commission's functions are of a legislative character; its rate-making orders are prospective in operation. A conclusion reached on the 1923 record is not controlling in 1927. The following quotation from the opinion of the Supreme Court in

Virginian Railway Company v. United States, 272 U. S. 658, 71 L. ed. 463, 47 Sup. Ct. 222 (1926),

seems pertinent here:

> "• • • This Court has no concern with the correctness of the Commission's reasoning, with the soundness of its conclusions, *or with the alleged inconsistency with findings made in other proceedings before it.*"
>
> (Pages 665-666.) (Emphasis supplied.)

Apart from these considerations there are important elements of difference between the records in the two proceedings. These are catalogued by the Commission in its report (R. 57, 58). The most significant of the differences, according to our view, are the following:

1. The movement had increased from 69,777 carloads in 1923 to 86,795 carloads in 1925 and 78,803 carloads in 1926 (Brief of appellants, p. 9). Changes in traffic volume exert an influence upon the measure of rates.

2. The complainant offered a more comprehensive rate showing. In particular, 39 entirely new rate exhibits effectively covering the perishable rate structure of the United States were presented. (R. 245-270.)

3. The complainant tendered an increase in the carload minimum on grapes from 26,000 pounds to 30,000 pounds, a percentage increase of 15½%. It is recognized that the measure af rates in dollars and cents per hundred pounds may properly vary with changes in minimum weights.

4. The carriers' operating costs had materially declined and their financial condition had correspondingly improved.

(The summary appearing upon pages 43 and 44 of the brief of appellants is not complete.)

It is immaterial that the proceedings were instituted by the same complainant and were directed against the same rates. The records in the two proceedings were distinct

and the conclusion reached in the case heard in 1927 is not impeached by reason of a different conclusion reached upon a distinct record in the case heard in 1923.

II.

ECONOMIC CONSIDERATIONS.

While the Commission may not competently require a rate reduction solely to meet the supposed necessities of industry, it may, after first finding existing rates unreasonable under Section 1 of the Act, take cognizance of economic conditions in aid of the exercise of its rate-making functions.

The appellants argue that the Commission is without authority to regulate industry through the medium of regulating rates and, in alternative phrase, that a rate cannot be based upon the reason that it is to the advantage or disadvantage of certain industries or localities (Brief of appellants, pp. 118, 120, et seq.). The validity of of this declaration of principle may be conceded, but we deny that the order of the Commission in this cause is in derogation of the rule.

The Commission may not say: "This industry is in need of rate relief; we shall therefore reduce the rates upon its traffic". But the Commission may say: "We find upon the evidence of record that the rates assailed are unreasonable under Section 1 of the Act; in arriving at the measure of reasonable rates for future application we shall give consideration to the state of the industry and the financial requirements of the carriers".

It is expressly recognized in the brief of appellants that it is "no new principle in rate-making" to take into consideration "the conditions which at any given time prevail in our several industries to the end that commodities should freely move". (Brief of appellants, p. 64; see also brief of appellants, page 152.)

This distinction goes to the substance of things. It would be strange indeed if the Commission must be blind to economic facts in exercising its rate-making discretion. If it were subject to this inhibition the "zone of reasonableness" would shrink to a mere line. Rate-making would be reduced to a mechanical process. There would be no room for intelligent discrimination and all rates would be built upon a mathematical formula of cost and profit. They could not be responsive to the requirements of industry and commerce.

The law has placed no such fetters upon the Commission. That the Commission may weigh economic facts, always provided that it does not fix rates in response to the supposed necessities of industry, has received the definite sanction of the Supreme Court. To this it will suffice to cite the decision in

Interstate Commerce Commission v. Union Pacific Railroad Company et al., 222 U. S. 541, 56 L. ed. 308, 32 Sup. Ct. Rep. 108 (1912).

This is a leading case and it is especially instructive because it fixes the line of demarcation between the powers reposed in the Commission and the powers which are denied to it.

The case involved attempted advances in the rates on lumber from the Pacific Northwest to the East. The Commission condemned the advances in part but allowed increases in certain of the rates. Upon the suit of the carriers, the United States District Court annulled the Commission's order. On appeal, the Commission's decision was sustained, the lower court being reversed. One of the objections earnestly pressed by the carriers against the order was that the Commission considered the effect of the attempted rate advances upon the lumber industry. The Commission's report clearly showed that it had examined and considered the economic state of the lumber industry and made an effort to determine its ability to bear an advance in rates. It also appeared that consideration had been given to the financial needs of the carriers. The Supreme Court, however, found that the objections of the carriers were without merit, since it appeared that the Commission's order was not made because of the effect of the advance on the lumber industry. The Court said (pages 554-555):

> "While there is language in the opinion which, looked at alone, might suggest that the Commission was attempting to decide more than the single question as to what was a reasonable rate, yet, taking the opinion as a whole, it affirmatively appears that the Commission confined itself to the exercise of its statutory powers to fix rates. *In its opinion it did discuss the issue of prosperity presented by mill men and carriers alike,* but held that—
>
> "* * * This controversy cannot be determined wholly upon the ground that complainants have enjoyed the lower rate for many years, and that interests have been built up thereunder, and that loss of

business investments, profits, and markets will result under the increased rates. It must be determined on the justness or reasonableness of the rates in controversy. * * * If the old rates were too low to be just and reasonable, complainants (mill men) cannot urge their loss as a ground for maintaining them; if the old rates were just and reasonable, the defendants cannot justify the advance on the ground of the prosperity of the lumber business.'

Considering the case as a whole, we cannot say that the order was made because of the effect of the advance on the lumber industry; nor because of a mistake of law as to presumption arising from the long continuance of the low rate, when the carrier was earning dividends; nor that there was no evidence to support the finding. If so, the Commission acted within its power, and, in view of the statute, its lawful orders cannot be enjoined. The decree, therefore, must be reversed." (Emphasis supplied.)

We think that this decision will effectively dispose of the contention that the Commission's order is invalid because it took cognizance of the economic distress of the California deciduous fruit industry. The Commission gave consideration to the economic facts, but only to assist its rate-making judgment after determining upon competent evidence that the prior rates were unreasonable. In passing upon the reasonableness of the rates assailed, it weighed the evidence which is pertinent to Section 1 of the Act; in prescribing rates for the future it kept expressly within the limits of its statutory powers.

III.

THE HOCH-SMITH RESOLUTION.

The Hoch-Smith Resolution has been properly construed by the Commission and, as so construed, the Resolution is valid.

The appellants' objective in this cause is to destroy the Hoch-Smith Resolution or at least to reduce it to impotence. It becomes important, therefore, to inquire into its purpose and scope, and finally to determine the validity of the construction imposed upon it by the Commission.

The Resolution is responsive to the determination of Congress (1) to remove the inequalities and injustices occasioned by the general percentage rate advances of 1918 and 1920 and by subsequent readjustments within the rate structure, and (2) to relieve agriculture from the disproportionate rate burden which has retarded its economic recovery. This is apparent from the report of the House Committee on Interstate and Foreign Commerce in connection with the Resolution. The following language contained in that report (House Report No. 735) is taken from page 57 of appellants' brief:

> "The present freight structure, which has grown up piecemeal and is the result of all sorts of local considerations, has long been out of adjustment. This maladjustment has been greatly increased by the flat, horizontal percentage increases in freight rates which have been made in recent years. These flat, horizontal increases were not scientific. The method used was grounded on expediency and the need for prompt action.
>
> * * * * * * *
>
> This improper distribution of the freight burden has borne particularly heavy on the products of the

> farm owing to the price deflation in those products. The present structure does not give proper weight to the question of what the traffic can fairly bear. The cost of service to the carriers is not the only factor that must be considered but the value of the service to the shipper as well."

The propriety of these objectives is self-evident. It will be our purpose to demonstrate the validity of the declaration of rate-making policy and to show that it has been neither misconstrued nor misapplied by the Commission.

In a preceding subdivision of this argument we have shown that the Commission's order in this cause has not proceeded from blind obedience to a supposed mandate of Congress. It has been shown, on the contrary, that the Commission acted upon evidence and that it was alert to keep within the limits of its statutory authority. The Commission has said, in effect:

> "This industry is within the terms of the Hoch-Smith Resolution. We must now determine whether the rates complained of are unreasonable when tested by accepted rate-making principles. If so found, we must fix rates for future application which shall be within the 'zone of reasonableness' as determined by established principles of rate-making and entirely lawful in accordance with all provisions of the Interstate Commerce Act, and which will also be the lowest rates which will promote the freedom of movement of these products and still insure the maintenance of adequate transportation service."

This is a correct appraisal of the Commission's course and we are satisfied that it is antagonistic neither to the terms nor the purpose of the Resolution.

A. Scope and purpose of the Hoch-Smith Resolution.

The Hoch-Smith Resolution (R. 514-516) has three objectives: *First*, it declares a rate-making policy. The first paragraph provides in brief "that the conditions which at any given time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move". *Second*, it requires, by the second paragraph, a general investigation of the rate structure of the country with a view to removing the inequalities resulting from the general horizontal rate increases. *Third*, the Commission is directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement of products of agriculture affected by depression at the lowest possible lawful rates compatible with the maintenance of adequate transportation service. The latter direction will be found in the third paragraph of the Resolution.

(The repeated employment of the term "lawful" or its equivalent throughout the text of the Resolution is significant. The condition of industry may be considered "in so far as it is legally possible to do so"; changes in the rate structure must be "lawful", and products of agriculture affected by depression may be accorded "the lowest possible lawful rates * * *". The Resolution is effectively safeguarded against any construction which might be inconsistent with existing statutes or offend against provisions of the Constitution.)

At this moment we are not concerned with the rate structure investigation. Our concern is rather with the

declaration of rate-making policy. *In so far as this proceeding is concerned, the Hoch-Smith Resolution contains nothing which would lead the Commission to reach a result different from that which it could properly have reached without the aid of the Resolution.* The order of the Commission in this case could, without doubt, be sustained under the provisions of the Interstate Commerce Act, without reference to the Hoch-Smith Resolution, because the evidence convinced the Commission that the rates were unreasonable and in violation of Section 1 of the Act, and because reasonable rates were prescribed for the future.

The rate-making policy declared in the Resolution is not novel—in fact, it is as old as American railroading. Moreover, it is in conformity with sound economic principles. This is but a re-phrasing of the accepted principle of "charging what the traffic will bear". It has long been recognized that all commodities cannot contribute in equal measure either to the carriers' costs or the carriers' profits.

Northern Pacific Railway Company v. North Dakota, 236 U. S. 585, 59 L. ed. 735, 35 Sup. Ct. 429 (1915);

Norfolk & Western Railway Company v. Conley, 236 U. S. 605, 59 L. ed. 745, 35 Sup. Ct. 437 (1915);

Minneapolis & St. Louis Railroad Company v. Minnesota, 186 U. S. 257, 46 L. ed. 1151, 22 Sup. Ct. 900 (1902);

Atchison, Topeka & Santa Fe Railway Company v. United States, 203 Fed. 56 (Com. Ct. 1913),

affirmed in 231 U. S. 736, 58 L. ed. 460, 34 Sup. Ct. 316;

Investigation and Suspension Docket 26 to 26-C, 22 I. C. C. 604, 623-624 (1912).

Consideration must be given to "what the traffic will bear", i. e., the ability of freight of high value to bear substantial rates and, correlatively, the inability of freight of lower value to carry rates in similar measure. This principle, expressed in varying terms, has always played a leading role in railroad rate-making.

In the first of the cases last above cited (*Northern Pacific Railway Company v. North Dakota*) the Supreme Court expressly recognizes the necessity of permitting a wide range of discretion in the exercise of the rate-making power. It is said in particular that there is no duty "to fix uniform rates for all commodities or to secure the same percentage of profit on every sort of business". The following is quoted from the opinion of the court (pp. 598-599):

> "The legislature, undoubtedly, has a wide range of discretion in the exercise of the power to prescribe reasonable charges and *it is not bound to fix uniform rates for all commodities or to secure the same percentage of profit on every sort of business.* There are many factors to be considered,—differences in the articles transported, the care required, the risk assumed, the value of the service, and it is obviously important that there should be reasonable adjustments and classifications." (Emphasis supplied.)

The wide range of administrative discretion necessarily reposed in the Commission has perhaps never received

clearer exposition than in the opinion of Commissioner Franklin K. Lane in *I. & S. Docket 26 to 26-C, supra.* We feel warranted in offering a somewhat extended excerpt from this opinion (pp. 623-624):

> "If a carrier may raise all rates to a basis where each will bear its share of cost, including all costs, and no lower rate is reasonable, then it must follow that all rates are unreasonable which yield to the carrier a greater return than such cost. Under such theory what would be the rate on tea or silks, high-priced horses, or delicate machines? Is there to be no classification of freight excepting upon the basis of cost of transportation plus insurance risk? If so the tariffs of every railroad in the United States must suffer a revolutionary change. *In all classification consideration must be given to what may be termed public policy, the advantage to the community of having some kinds of freight carried at a less rate than other kinds. And this is the true meaning of the phrase 'what the traffic will bear'. It expresses the consideration that must be shown by the traffic manager to the need of the people for certain commodities.* He accordingly imposes a higher rate upon what may be termed luxuries as compared with that imposed upon those articles for which there is a more universal demand. He also gives consideration to the fact that the rate so imposed enters into the ultimate price to the consumer to but a small degree when the article is one of high value, and that those in the community who can afford to purchase such articles can well afford to pay a rate greater than that which could reasonably be imposed upon the general public for commodities of common use. In this sense what the traffic will bear and the value of the service are analogous. No one would claim that a carrier was violating its duty under the law in charging three times the rate upon oriental rugs that it imposed upon cotton. This would not be undue

discrimination as between commodities, even though it costs no more to transport the rugs than it did the cotton, assuming both to be carried at the owner's risk, for the one does not compete with the other, and one may reasonably bear a higher rate than the other upon public grounds. It must be, therefore, that this Commission, under the amendment to section 1 passed by Congress in 1910, giving to us the control of freight classification, has power to determine the reasonableness of the differences that are made between the rates made applicable to the various kinds of commodities transported. We may not say that a rate shall be fixed so as to meet the requirements or needs of any body of shippers in their efforts to reach a given market, nor may we establish rates upon any articles so low that they will not return out-of-pocket cost. Neither could we fix an entire schedule of rates which would yield an inadequate return upon the fair value of the property used in the service given. *There is, however, a zone within which we may properly exercise 'the flexible limit of judgment which belongs to the power to fix rates'.* These are the words of the Chief Justice of the Supreme Court, 206 U. S., 26. *There is no flexible limit of judgment if all rates must be upon a level of cost, and out of every dollar paid to the carrier must come a fixed amount of return for capital invested.* The recognition of such a doctrine has never been suggested either by Congress or the Supreme Court. A just and reasonable rate must be one which respects alike the carriers' deserts and the character of the traffic. It can not be a rate that takes from the carrier a profit and thus favors the shipper at the carrier's expense, nor is it one which compels the shipper to yield for the transportation given a sum disproportionate either to the service given by the carrier or to the service rendered to the shipper. The words 'just and reasonable' imply the application of good judgment and fairness, of common sense and a sense of justice to a given condition of facts. They are not fixed, unalterable, mathematical terms.

> Their meaning implies the exercise of judgment, and against the improper exercise of that judgment the Constitution gives protection, at least as far as the carriers are concerned." (Emphasis supplied)

Such was the law, and such was the practice of the Commission in its administration, many years before the Hoch-Smith Resolution came into being.

Under the terms of the Resolution, the rates which the Commission may prescribe must be *lawful*, i. e., they must be reasonably compensatory. They must suffice to meet the expense of service and contribute fairly to profit. The Commission's freedom of action in rate-making must be exerted within the upper and lower limits of reasonableness.

Entirely without the aid of any direction on the part of Congress, the Commission may, upon finding rates unreasonable under Section 1, appropriately exercise its rate-making discretion within the zone of reasonableness in order to insure freedom of movement. Before the passage of the Resolution the Commission pursued this course in important cases dealing with agricultural products.

> *Re Transportation of Wool, Hides and Pelts*, 23 I. C. C. 151, 156, (1912);
>
> *Rates on Grain, Grain Products and Hay*, 64 I. C. C. 85 (1921);
>
> *Fertilizer and Fertilizer Materials*, 113 I. C. C. 389 (1926).

If this is competent for the Commission in the absence of express legislative direction, it is equally competent for

Congress to recognize the existence of a depression in agriculture—an industry whose welfare is of far-reaching public importance—and to direct the Commission to follow that rate-making policy in dealing with agricultural products affected by depression. In neither case are Constitutional safeguards disregarded, since the Commission may in no event prescribe rates which are unlawful.

The Resolution cannot be found objectionable on the ground that the language of the final paragraph is confined to "the products of agriculture affected by that depression". This is but a direction to the Commission that, in applying the general rate-making policy which is conveyed by the first paragraph, it shall, as the appellants so aptly phrase it (brief of appellants, page 70), give "first aid and attention to agriculture". It will not be doubted that the situation of agriculture at the time of the passage of the Resolution justified Congress in directing special attention to that industry and asking the Commission to effect with the least practicable delay *lawful* changes in rates on such of those products as were affected by depression. *The Supreme Court has expressly recognized that the legislature may competently enact statutes for the protection and encouragement of agriculture.*

In

Liberty Warehouse Company v. Burley Tobacco Growers' Co-operative Marketing Association, 276 U. S. 71, 48 Sup. Ct. 291 (1928),

a Kentucky statute known as the Bingham Co-operative Marketing Act (Laws Ky. 1922, c. 1) was alleged to be in

violation of the Fourteenth Amendment to the Constitution of the United States. In holding the act constitutional, the Supreme Court said (page 96):

> "• • • • *This court has recognized as permissible some discrimination intended to encourage agriculture.* American Sugar Refining Co. v. Louisiana, 179 U. S. 89, 95, 21 S. Ct. 43, 45 L. Ed. 102; Cox v. Texas, 202 U. S. 446, 26 S. Ct. 671, 50 L. Ed. 1099." (Emphasis supplied.)

In

> *American Sugar Refining Company v. Louisiana,* 179 U. S. 89, 45 L. Ed. 102, 21 Sup. Ct. 43, (1900),

the Supreme Court sustained a statute of Louisiana which imposed a license tax upon persons and corporations carrying on the business of refining sugar and molasses and which expressly exempted from its operation planters and farmers grinding and refining their own sugar and molasses. We quote from page 95 of the opinion in that case:

> "• • • *The discrimination is obviously intended as an encouragement to agriculture, and does not deny to persons and corporations engaged in a general refining business the equal protection of the laws.*" (Emphasis supplied.)

See also

> *Cox v. Texas,* 202 U. S. 446, 50 L. Ed. 1099, 26 Sup. Ct. 671 (1906).

If it is proper for a state legislature to favor agriculture, a correlative power is reposed in Congress.

The settled rule that it is competent for Congress to encourage co-operative marketing of agricultural products and to relieve such co-operative marketing organizations from the restraints of anti-trust laws is exemplified by the opinion of the court in

Frost v. Corporation Commission of Oklahoma, 26 F. (2d) 508 (D. C. Okla. 1927).

In that case the court said (page 515):

> "The encouragement of co-operative marketing on the part of the producers of agricultural products, which includes agriculture, horticulture, viticulture, dairy products, live stock, and the products thereof, the products of poultry and bee raising, the edible products of forestry, and any and all products raised or produced on farms, and possessed or manufactured products thereof, transported or intended to be transported in interstate or foreign commerce, appears to be a declared policy on the part of the United States. See section 451, c. 18, tit. 7, Code of Laws of the United States in force December 6, 1926, 44 United States Statutes at Large, 69th Congress 1925-1926, pt. 1 (7 USCA Sec. 451)."

In addition to the Co-operative Marketing Act of 1926 (44 Stat. L. 802, U. S. C., Title 7, sections 451-457), referred to in the *Frost* case, see also the Clayton Act (38 Stat. L. 731, U. S. C., Title 15, section 17) and the Capper-Volstead Act (42 Stat. L. 388, U. S. C., Title 7, sections 291-292). In this connection, see likewise

Smith v. Kansas City Title & Trust Company, 255 U. S. 180, 65 L. Ed. 577, 41 Sup. Ct. 243 (1921),

wherein the Federal Farm Loan Act (39 Stat. L. 360, 40 Stat. L. 431) was held to be constitutional.

In view of this settled policy it would seem competent for Congress to direct the Commission to accord to agricultural products affected by depression "the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

B. Pertinence of the Resolution to the present proceeding.

It is contended that the Commission misapplied the Resolution in this case, since this was not a general investigation of the entire rate structure of the country. The argument is that the Resolution cannot be invoked in a proceeding involving a single rate or a class of rates, but is pertinent only to a general investigation of the rate structure of the entire country instituted by the Commission pursuant to the Resolution, wherein the Commission shall make simultaneous and reciprocal increases and decreases in rates.

There is nothing in the Resolution which prohibits the Commission from observing this rate-making policy in cases involving a single rate or a class of rates. And we are not required to rest upon the want of such prohibition, since the Resolution by its very terms indicates that application of that rate-making policy to the movement of products of agriculture shall not await the outcome of the vast investigation contemplated by the second paragraph of the Resolution. The text shows that it contemplates expeditious action. The third paragraph refers to "the existing depression in agriculture" and directs the Commission to effect the purposes of the Resolution "with the least practicable delay".

Further evidence of the desire of Congress for immediate relief for agriculture is afforded by the proviso in the concluding portion of the Resolution. This proviso recites:

> "That no investigation or proceeding resulting from the adoption of this resolution shall be permitted to delay the decision of cases now pending before the Commission involving rates on products of agriculture, and that *such cases shall be decided in accordance with this resolution.*" (Emphasis supplied.)

Certainly we cannot assume an intent on the part of Congress that the policy of the Resolution should be observed in individual rate cases pending before the Commission at the time of its passage and that it should thereafter lie dormant until the determination of the general investigation to be instituted by the Commission. The Resolution in its entirety conveys the purpose of prompt relief for branches of agriculture suffering from economic depression.

Moreover, as the United States District Court points out in its memorandum opinion of January 18, 1928, in this cause (R. 100), the terms of the Resolution "are in a large measure directory". The quoted observation follows the conclusion of the Court that the Commission had authority to reduce rates on products of agriculture before completing its general investigation of the rate structure (R. 100).

To argue that the Commission misconstrued the Resolution as authorizing it to reduce a single rate or a class of rates without a contemporaneous rearrangement of the

rate structure of the country is to contend that after the adoption of the Resolution all changes in rates upon products of agriculture affected by depression must emanate from the general rate investigation alone. The Resolution does not provide or imply that the Commission is inhibited from acting in response to formal complaint. If this construction were to be impressed upon it, the rate structure on products of agriculture would be hard frozen for many years pending the completion of the country-wide investigation inaugurated by the Commission in Docket No. 17,000 (R. 518). The Resolution would have become a means to frustrate all efforts to secure needed rate relief for agriculture. *The Resolution would thus have so functioned as to safeguard the carriers for many years against rate reduction on products of agriculture*—a complete negation of the Congressional intent.

It is recognized in the brief of appellants that the Resolution contemplates "first aid" for agriculture. The following sentence is quoted from appellants' brief (page 70):

> "* * * It directed the Commission, as the agents of the government, to revise the rate structure in accordance with existing law, to do away with the inequalities and injustices that had grown up by reason of its unscientific piecemeal growth, and *to give first aid and attention to agriculture* in its work of revision." (Emphasis supplied.)

The suggestion that *first* aid is to be given to agriculture is not consistent with the contention that reductions

in rates on agricultural products shall await the outcome of the general investigation or that reductions and advances must be concurrent and reciprocal.

If examination of the terms of the Resolution leaves doubt as to its interpretation, the Court may determine the legislative intent from an examination of the legislative history, including the changes made in the Resolution in the course of its passage, the reports of committees of Congress to which the Resolution was referred, and explanatory remarks of the committee member in charge of the Resolution.

Binns v. United States, 194 U. S. 486, 48 L. ed. 1087, 24 Sup. Ct. 816 (1904);

Johnson v. Southern Pacific Company, 196 U. S. 1, 49 L. ed. 363, 25 Sup. Ct. 158 (1904);

Lewis Publishing Company v. Morgan, 229 U. S. 288, 57 L. ed. 1190, 33 Sup. Ct. 867 (1913);

United States v. Forty Barrels Coca Cola, 241 U. S. 265, 60 L. ed. 995, 36 Sup. Ct. 573 (1916);

Caminetti v. United States, 242 U. S. 470, 61 L. ed. 442, 37 Sup. Ct. 192 (1917);

United States v. St. Paul, Minneapolis & Manitoba Railway Company, 247 U. S. 310, 62 L. ed. 1130, 38 Sup. Ct. 525 (1918);

Duplex Printing Press Company v. Deering, 254 U. S. 443, 65 L. ed. 349, 41 Sup. Ct. 172 (1921).

As finally passed, the Hoch-Smith Resolution is a consolidation of two distinct resolutions, introduced in the House of Representatives and the Senate, respectively. The second paragraph of the Resolution as finally adopted

had its origin in House Joint Resolution 141 (68th Congress, 1st Session), introduced before the House of Representatives by Mr. Homer Hoch of Kansas on January 16, 1924 (Cong. Rec., Vol. 65, p. 1071). That resolution contemplated a general investigation of the entire rate structure of the country, *for the purpose of eliminating the inequalities in freight rates which had resulted from the horizontal rate increases and decreases during and after the war.* (See House Report No. 735, House Reports, Vol. IV, 68th Cong., 1st Sess.)

Except for minor changes, the first and third paragraphs of the Resolution as finally adopted formed the whole of Senate Joint Resolution 107 (68th Congress, 1st Session) as originally passed by the Senate on May 12, 1924 (Cong. Rec., Vol. 65, pp. 8336-8337). That resolution contained no reference whatsoever to an investigation of the rate structure of the country. It declared the rate-making policy contained in the first paragraph of the Resolution as finally passed, and continued (Cong. Rec., Vol. 65, p. 8336):

> "It is further declared that agriculture is the basic industry of this country; and that it is the policy of Congress to promote, encourage, and foster that industry, and especially in rate making during the existing depression in agriculture. *In furtherance of these policies* the Interstate Commerce Commission is hereby directed, *with the least practicable delay,* to effect such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service. * * *" (Emphasis supplied.)

There is not the slightest suggestion that this original Senate resolution contemplated an investigation such as is directed by the second paragraph of the Resolution as finally adopted. The policy announced was, of course, intended to be applied in all proceedings. Immediate relief for products of agriculture was contemplated. The report of the Senate Committee on Interstate Commerce supports this view. In recommending that Senate Joint Resolution 107 pass, the Committee states (Senate Report No. 313, Senate Reports, Vol. I, 68th Cong., 1st Sess.):

> "This joint resolution is for the purpose of declaring the policy of the Congress as to freight rates on agricultural products and directing the Interstate Commerce Commission to carry this policy into effect.
>
> Congress having delegated to the Interstate Commerce Commission the power to make rates, it was thought unwise to attempt to dictate any specific rate, but to direct the commission that *in the exercise of its rate-making power* that the products of agriculture should carry the lowest rate in the rate structure. * * *" (Emphasis supplied.)

It will be noted that no suggestion is found in the Committee's report that this policy shall be applied only in an investigation of the entire rate structure of the country. It indicates clearly that the policy shall be followed whenever the Commission is called upon to exercise its rate-making power. Since the contents of this resolution have, in substance, been carried into final form as the first and third paragraphs, there is no possibility of reading into the Resolution in its entirety a provision limiting application of the rate-making policy to a general investigation of the entire rate structure of the country.

Senate Joint Resolution 107, as passed by the Senate, was amended in the House by consolidating all of House Joint Resolution 141 and the second paragraph of Senate Joint Resolution 107. (House Report No. 867, House Reports, Vol. IV, 68th Cong., 1st Sess.; Cong. Rec., Vol. 65, pp. 9675, 11018-11026.) The House Committee on Interstate and Foreign Commerce, in reporting this amendment, incorporated into one resolution the requirement of a general investigation as contemplated by House Joint Resolution 141 and the Senate's plan of prescribing a rate-making policy. The report of the Committee indicates that the two paragraphs of the proposed consolidated resolution contemplate entirely different courses of action by the Commission and that the observance of the policy declared in the last paragraph is not confined to the investigation directed by the other paragraph. Referring to the last paragraph, the report says (House Report No. 867,* *supra*):

> "* * * This direction to the commission involves no purpose to do injury to the carriers but expresses the will of Congress that in this time of agricultural depression the basic industry of agriculture shall be given *with the very least possible delay every consideration in the matter of rates consistent with the*

*In the discussion of the legislative history of the Hoch-Smith Resolution in the brief of appellants, House Report No. 735 is quoted. (Brief of appellants, pages 56-58.) It is erroneously stated by the appellants (brief, page 56) that this report was rendered at the time of the consolidation of House Joint Resolution No. 141 and Senate Joint Resolution No. 107. This is in fact the report on the original House Joint Resolution No. 141. That resolution contemplated only a general investigation. Consequently, House Report No. 735 relates only to the desirability of a general investigation. House Report No. 867 is the report upon the consolidated resolution. The difference in the language of these two reports discloses the dual scope of the resolution after the consolidation of House Joint Resolution No. 141 and Senate Joint Resolution No. 107.

maintenance of adequate transportation service." (Emphasis supplied.)

Mr. Hoch, the committee member in charge of the resolution in the House, gave the following explanation of the second paragraph as reported by the Committee—the third paragraph of the resolution as finally adopted (Cong. Rec., Vol. 65, p. 11024):

> "* * * The second paragraph is an honest direction to the commission, calling attention to the agricultural depression and *directing every possible relief, reasonable and lawful, at the earliest practicable date.* * * *" (Emphasis supplied.)

Senate Joint Resolution 107, amended as indicated above, was passed by the House. (Cong. Rec., Vol. 65, p. 11026.) The Senate disagreed to these amendments. (Cong. Rec., Vol. 65, p. 11124.) A conference between members of the Senate and the House resulted in a conference report which added to the Resolution, as passed by the House, the first paragraph as finally adopted and changed slightly the third paragraph. (Cong. Rec., Vol. 65, pp. 11245-11246.) The Resolution was passed by both the Senate and the House in accordance with the conference report. (Cong. Rec., Vol. 65, p. 11246; Vol. 66, p. 2501.) It became effective on January 30, 1925.

Analysis of both the terms of the Resolution and the proceedings in Congress leads irresistibly to the conclusion that the Hoch-Smith Resolution represents a direction by Congress to the Commission to afford agricultural products affected by depression immediate rate relief in all respects which are legally possible. The pres-

ent case offers an instance in which it is legally possibl for the Commission to afford such relief. It is precisel one of the cases toward which the Resolution is directe Certainly there is nothing in the text of the Resolutio itself or in the proceedings before Congress which su ports the contention that the purpose of the Resolution limited to an investigation of the entire rate structure the country.

C. Standards of Reasonableness Required by Hoch-Smith Resolution.

The claim is made that the Commission's order is arb trary and beyond its power because, it is asserted, th Commission failed to find that the rates which it ordere reduced were unreasonable and that the rates prescribe were reasonable, as tested by the accepted principles rate-making. It is likewise contended that the Commissio construed the Hoch-Smith Resolution as authorizing an directing it to reduce reasonable rates on agricultur products affected by depression, and to establish suc rates below the point of reasonableness. We propose t show that the Commission has neither so acted nor s ruled.

1. *Commission's construction of Resolution in relatio to determination of reasonableness of existing rates.*

The Commission recognized that the existing rates mu be proved unreasonable in accordance with accepted pri ciples of rate-making before it could proceed to acco products of agriculture affected by depression the lowe possible lawful rates compatible with the maintenance adequate transportation service. Furthermore, it e

pressly found the existing rates unreasonable upon the record.

The appellants suggest that there is no warrant "for the Commission to reduce an admittedly reasonable rate." (Brief of appellants, page 75.) The Commission has nowhere said or implied that the rates assailed are "admittedly reasonable." This term is of the appellants' coinage.

In its report the Commission states (R. 26) that defendants "claim that if they have justified their present rates under sections 1 and 3 of the interstate commerce act, nothing either in the Hoch-Smith resolution, or developed of record in the instant case, will provide lawful warrant for us to reduce such rates". The Commission indicates its concurrence in defendants' position by quoting the following from one of its prior decisions construing the Resolution (R. 26):

> "* * * *It sets no new standard of lawfulness,* but provides, in effect, that to the extent that there are flexible limits to our discretion, we shall require the maintenance of the lowest rates falling within those flexible limits. * * *" (Emphasis supplied.)

It has previously been pointed out that the Commission treated this case as a conventional rate case and that it devoted page after page of its report (R. 28-48) to testing the current rates by the accepted principles of ratemaking.

Not only do the contents of the report show that the Commission tested the reasonableness of the existing rates in the ordinary manner, but in both the original report

and the report on further consideration there are express findings of unreasonableness. At the close of the original report, the Commission finds (R. 58):

> "that the rate of $1.73 as applied to the transcontinental shipment of deciduous fruits from California to Groups A to M inclusive, except Group J is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.60; * * *."

There is an analogous finding with respect to the rate of $1.62 to Group J. Again, in the report on further consideration, the Commission states (R. 68):

> *"On the whole record, we adhere to our former finding that the present rates are unreasonable* * * *." (Emphasis supplied.)

These findings must be read in conjunction with the Commission's entire report.

> *Southern Pacific Company v. Interstate Commerce Commission,* 219 U. S. 433, 55 L. ed. 283, 31 Sup. Ct. 288 (1911).

When so read, they indicate clearly that the Commission is referring to the unreasonableness of the rates in accordance with the standard tests of reasonableness, the application of which has consumed so many pages of its report. (R. 28-48.)

We agree with appellants that an expression of the Commission cannot acquire a meaning never intended "by being lifted out of its context and segregated from the remainder of the report". (Brief of appellants, p. 49.) We are likewise in agreement with the suggestion that "The whole report may be examined to determine

the real grounds on which the Commission's order is based and its nature and character". (Brief of appellants, p. 49.) It seems to us, however, that the appellants' presentation involves a signal violation of these rules. In brief, reliance has been placed upon language which has been "lifted out of its context" and various expressions have been assembled in such fashion as to induce a meaning which the entire report does not convey. (See brief of appellants, pp. 41-48.)

The appellants refer to the Commission's statement (R. 58) that "the present rates are in excess of the lowest possible lawful rates as herein defined". (Brief of appellants, p. 44.) This language affords no indication that the Commission failed to test the existing rates by the ordinary standards of reasonableness. This particular finding should be construed in association with other findings, and we may recall again that the Commission devotes many pages of its report to testing the existing rates in accordance with conventional methods.

Appellants likewise seek to find support for their position in the Commission's statement (R. 56) that "The primary issue to be determined, therefore, is whether the $1.73 rate assailed approaches the lowest limit or level of the zone of reasonableness permitted by the flexible limit of discretion reposed in us". (Brief of appellants, pp. 42, 43, 47 and 48.) Here again the import of this statement cannot be determined if it is to be wholly dissociated from the remainder of the report. When the report in its entirety is reviewed it is found that the

Commission's statement last above quoted is addressed to the determination of the measure of future rates, responsive to the terms and purpose of the Hoch-Smith Resolution. At that stage of the inquiry, the "primary issue" was exactly as stated by the Commission.

The appellants select various statements which appear in the concurring and dissenting opinions. Of course these opinions are not controlling, but when they are read in conjunction with the opinion of the majority they lend no support to the appellants' contention that the Commission failed to consider the reasonableness of the existing rates.

2. *Commission's construction of Resolution in relation to fixing reasonable rates for future application.*

The Commission's analysis of the Hoch-Smith Resolution in its report (R. 26-28) leaves no doubt that it considers that the rates which it is authorized to establish pursuant to the Resolution must be reasonable in accordance with accepted principles of rate-making. Of the Resolution, the Commission says, quoting from an earlier decision (R. 27):

> "* * * Of course, the other sections of the interstate commerce act must also be borne in mind in determining the lowest lawful rates in a particular situation."

This is followed by a restatement of this same view in the following language (R. 27):

> "The resolution is in effect a direction to us to give agricultural commodities affected by depression

> the lowest rates that it is possible to give without running counter to the provisions of the interstate commerce act and the carriers' rights under the Constitution. Section 1 of the act requires that all rates shall be just and reasonable. What is a reasonable rate? * * *"

The Commission proceeds to answer this question. It states (R. 27-28):

> "* * * there is a zone of reasonableness within which any rate is just and reasonable to the carrier as well as just, fair, and reasonable to the shipper that utilizes the carrier's services."

The following definition of "the lowest possible lawful rates" is then given by the Commission (R. 28):

> "We again conclude that 'the lowest possible lawful rates' which we may prescribe under the resolution on any given agricultural traffic as to which depression has been shown must be somewhere within the zone of reasonableness permitted by the flexible limits of discretion reposed in us, and that such rates must be put as near the lowest limit or level of that zone as is compatible with the maintenance of adequate transportation service."

In the light of this definition, the Commission expressly finds (R. 59) that the rates prescribed "are the lowest possible lawful rates compatible with the maintenance of adequate transportation service".

We agree with appellants that "the word 'lawful' is not intended to mean something different from 'reasonable,' or to fix a different standard than would be fixed by the word 'reasonable.' " (Brief of appellants, page

75.) Our challenge is directed to the contention that the Commission has attempted any such differentiation. It will appear upon a reading of the report that, in the view of the Commission, the word "lawful" means "reasonable."

3. Validity of the Resolution as construed by the Commission.

As construed by the Commission, the Hoch-Smith Resolution does not effect the reduction of rates which could not properly be reduced by the Commission without the aid of the Resolution, nor does it bring about the reduction of rates below a point to which they might properly be reduced without the aid of the Resolution. Unreasonable rates have been ordered reduced and reasonable rates have been prescribed. The standard of reasonableness which has been applied is entirely apart from the terms of the Resolution.

Consequently, it cannot be said that section 1 of the Interstate Commerce Act has been violated, or that the carriers have, in disregard of any statutory or constitutional provision, been prevented from maintaining rates which they are entitled to maintain or compelled to establish rates which are lower than they can properly be required to establish.

The Commission's order in this case does not present the difficulties which led this Court to annul the Commission's order in

United States v. New York Central Railroad Company, 263 U. S. 603, 68 L. ed. 470, 44 Sup. Ct. 212 (1924).

That case arose out of an order of the Interstate Commerce Commission which purported to be made pursuant to an amendment to section 22 of the Interstate Commerce Act. This amendment, among other things, directed the Commission to require each carrier by rail subject to the Act to issue interchangeable mileage or scrip coupon tickets at just and reasonable rates. After a hearing the Commission ordered all Class I railroads to issue a non-transferable interchangeable scrip coupon ticket in the denomination of $90, which should be sold at a reduction of 20 per cent from the face value of the ticket. The carriers secured a permanent injunction from the United States District Court against the enforcement of the Commission's order. This was affirmed by the Supreme Court on appeal. This Court held that the amendment to section 22 of the Interstate Commerce Act

> "required a determination of what was just and reasonable exactly as in any other case arising under the Interstate Commerce Act." (Page 610.)

The Court was of the opinion that the Commission's order was made solely in deference to the amendment and that the Commission had reached a result which otherwise would not have been reached.

The Commission's order which the Court annulled was entered in

> *Interchangeable Mileage Ticket Investigation*, 77 I. C. C. 200 (1923).

An examination of the Commission's report in that proceeding shows that the Commission did not test the reasonableness of the existing fares by any standard. The

notice of hearing issued by the Commission instituting the proceeding contained nine suggested lines of evidence. There is no suggestion of any evidence concerning the reasonableness of the existing fares nor of evidence testing by accepted principles of rate-making the reasonableness of the fares prescribed. The entire structure of the Commission's report shows that the Commission did not treat the case as a conventional rate case, but that it assumed to prescribe reduced fares regardless of whether the existing fares were unreasonable or whether those prescribed would be reasonable.

A comparison of the report in that case with the Commission's report in the present case will reveal the lack of similarity between the two proceedings. The report in the present case is full of indicia that the Commission avoided the errors which the Court found in the *Passenger Scrip* case.

D. Consideration of Economic Condition of the Deciduous Fruit Industry.

It is apparent from a reading of the Commission's report that the Commission has not reduced rates in this proceeding solely in response to the economic condition of the deciduous fruit industry in California. It is true that, having found the existing rates unreasonable in accordance with accepted principles of rate-making, the Commission followed the rate-making policy declared in the Hoch-Smith Resolution and considered the economic condition of the industry in determining at what point within the zone of reasonableness the new rates should be established.

This is but the correlation of the charge for the service rendered by the carrier to the value of the service to the shipper. It is the application of the well-established principle of "charging what the traffic will bear". We have pointed out in an earlier portion of our argument that this principle was followed by the Commission and approved by this Court long before the passage of the Hoch-Smith Resolution.

Appellants rely upon decisions which hold, in brief, that rates may not be reduced solely because of the unfavorable economic state of a particular industrial enterprise.

In

Southern Pacific Company v. Interstate Commerce Commission, 219 U. S. 433, 55 L. ed. 283, 31 Sup. Ct. 288 (1911),

suit was brought to enjoin the enforcement of an order of the Commission setting aside increased rates on lumber from points in the Willamette Valley, in Oregon, to San Francisco Bay points and restoring, substantially, rates which had previously been in effect. It clearly appeared, upon a review of the Commission's opinion, that the advanced rates were not condemned as unreasonable. In fact, the reasonableness of the advance was admitted by the complaining lumber interests, but it was insisted that because the lower rates had long been voluntarily maintained, the carrier was estopped from making an increase. The Commission upheld the contentions of the complaining lumber interests and condemned the advanced rate. The Supreme Court annulled the Commission's order because it did not proceed from an exercise of the power

to make reasonable rates, but was rested, rather, upon an assumed equitable estoppel.

Another case of apparently similar character is

Anchor Coal Company v. United States, 25 F. (2d) 462 (D. C. W. Va. 1928).

This was a suit in the United States District Court for the Southern District of West Virginia to enjoin the enforcement of an order of the Interstate Commerce Commission which directed that the carriers cancel certain rate schedules reducing by 20 cents per ton the freight rate on "lake cargo" coal from the southern coal field to the lake ports. The Commission had previously issued an order reducing by 20 cents the rate from the northern field to the lake ports, thus increasing from 25 to 45 cents the differential in favor of the northern field. Subsequently, the carriers serving the southern field filed schedules reducing the rates from the southern field by 20 cents, thereby restoring the old differential. These rates were suspended by the Commission. After a hearing, the Commission ordered the new schedules cancelled. (139 I. C. C. 371.) Suit was brought to enjoin the Commission's order. The District Court granted the injunction, and an appeal is now pending in this Court.

One ground of the Court's decision was that the Commission's order was based upon the relative industrial conditions prevailing in the northern and southern coal fields. The Court concluded that both the Commission's order reducing the rate from the northern field and its order cancelling the proposed reductions from the southern field were based, not upon accepted principles of rate-

making, but solely upon industrial conditions. In other words, the Court concluded (page 471) that this was purely an effort on the part of the Commission "to equalize industrial conditions or offset economic advantages through adjustment of rates". The Court indicates that its ruling was rested upon the same ground which determined the Supreme Court's decision in *Southern Pacific Company v. Interstate Commerce Commission, supra.* Respecting that case the District Court says (page 472):

> "* * * but in that case, as we think in this, the report of the Commission showed that its action was based primarily upon a consideration of the effect of the rate on industry. * * *"

Further language of the Court in the *Anchor Coal Company* case shows clearly that, in the Court's opinion, the Commission was not endeavoring to regulate rates, but was attempting to establish rates which would enable producers located at different points to compete in the same market. The Court says (page 470):

> "It is perfectly evident from a study of the foregoing reports of the Commission that, in reducing the rates from the northern field, and in directing the cancellation of the reduction from the southern field, the Commission was primarily concerned, not in fixing rates, but in fixing the differential which was to prevail between the two fields, and that, in expanding the differential to 45 cents and in refusing to allow the old differential of 25 cents to be restored, the Commission based its action upon the shift of tonnage from the northern to the southern field and the industrial conditions resulting therefrom. * * * But it must be manifest that increasing the differential to meet such a situation is not regulation of rates, but regulation of industrial conditions under

> the guise of regulating rates. * * * It matters not what this may be called, it is in essence a regulation of industrial conditions through manipulation of rates."

An effort was made to justify the Commission's action in that case under the terms of the Hoch-Smith Resolution. The District Court held that the Hoch-Smith Resolution did not give the Commission power to regulate industrial conditions under the guise of rate-making.

The appellants refer to other cases which hold that the Commission cannot regulate industry under the guise of rate-making and that it cannot "equalize fortune, opportunities or abilities". (Brief of appellants, pages 120-128.) It is unnecessary to discuss these decisions in detail. They are wholly inapposite here. The Commission has not required a rate reduction in the instant case solely because of the serious and persistent depression in the California deciduous fruit industry. It has found that these conditions exist, but has accorded them weight only for the purpose of assisting it in the exercise of its lawful rate-making discretion. The Commission has not regulated industrial conditions under the guise of rate-making. It has not attempted to "equalize fortune, opportunities or abilities".

The appellants likewise endeavor to show that the construction placed upon the Hoch-Smith Resolution by the Commission violates the Fifth Amendment to the Constitution. (Brief of Appellants, pages 130-147.) It is asserted that the Commission has assumed to subsidize the deciduous fruit industry. Decisions are cited which

hold that the taxing power may be exercised only for public purposes and that Congress is unable to pay a bounty to sugar producers in lieu of tariff protection. It is difficult to see how such decisions import unconstitutionality to a resolution which results in the condemnation of unreasonable rates and the establishment of reasonable rates in accordance with principles which have been universally followed in rate proceedings and approved by the Supreme Court. (*Interstate Commerce Commission v. Union Pacific Railroad Company, supra.*) The intimation that the Commission has attempted to subsidize the California deciduous fruit industry is wholly gratuitous.

The Hoch-Smith Resolution has not been construed by the Commission as a regulation of agriculture. The appellants' argument on pages 130 to 147 of their brief is based upon a distortion of the Commission's interpretation of the Resolution. The cases cited are directed to no issue raised by the attack upon the Commission's order.

In the *Anchor Coal Company* case, *supra,* the Court indicates that if the Commission had properly pursued the rate-making policy declared in the Hoch-Smith Resolution, its action would not have been objectionable. The Court says (page 474):

> "So far as the general language of the resolution is concerned, to the effect that the conditions which prevail in industry should be considered in adjusting freight rates, to the end that commodities may freely move, *this is no more than a general declaration that freight rates shall be adjusted in such way as to provide the country with an adequate system of trans-*

> *portation*, and Congress certainly did not intend by this language to create in the Commission an economic dictatorship over the various sections of the country, with power to kill or make alive. * * *" (Emphasis supplied.)

Thus, the Court voices its approval of the application, in a proceeding involving a single rate or a class of rates, of the rate-making policy declared in the Hoch-Smith Resolution, provided the action of the Commission does not go beyond rate regulation and become instead the regulation of industrial conditions.

It would be strange indeed if the Commission could not inquire into the needs of industry and the condition of the carriers with a view to exercising its rate-making discretion, provided that it undertakes to determine the measure of reasonable rates in accordance with rate-making standards. If it has rate-making discretion—if there is a zone of reasonableness within which it may exert its authority—it must familiarize itself with the economic side before it can exercise its discretion with intelligence. That such inquiries are within the proper province of the Commission is attested by the decision of the Supreme Court of the United States in *Interstate Commerce Commission v. Union Pacific Railroad Company, supra.*

We think that this decision will effectively dispose of the contention here urged that the Commission's order is invalid because it gave consideration to the economic state of the California deciduous fruit industry. The Commission properly considered and reported the facts, but only

to aid it in the exercise of its rate-making discretion. In proper course it directed itself to the determination of the measure of reasonable rates, and in prescribing these specific rates it gave appropriate weight to all the material elements of a comprehensive record bearing upon the measure of transportation charges.

E. Margin of Profit Required in Fixing Rates on Commodities within Terms of Hoch-Smith Resolution.

It is urged that the Commission misconstrued the Hoch-Smith Resolution by interpreting it as requiring, in cases of depression, the fixing of rates at a figure only slightly in excess of cost. The Commission has not so held.

In its report on further consideration, the Commission says (R. 67):

> "* * * In other words, *even if the cost study were accepted without question*, it would indicate that the prescribed rates are slightly above the operating expenses and would confirm the impression obtained from comparisons with other rates that the new rates, while probably of less than average profitableness, would still leave the traffic attractive to the carriers." (Emphasis supplied.)

The Commission's original report and the report on further consideration show that the Commission *did not accept the carriers' cost study.* (R. 67.) Consequently, it may not correctly be said that the Commission interpreted the Hoch-Smith Resolution as requiring the fixing of rates at a figure only slightly exceeding costs.

The Commission recognizes that the Hoch-Smith Resolution establishes no new standard with respect to the margin of profit to which the carriers are entitled. The

Commission accepts (R. 26) the rules announced by the Supreme Court in

Northern Pacific Railway Company v. North Dakota, 236 U. S. 585, 59 L. ed. 735, 35 Sup. Ct. 429 (1915);

Norfolk & Western Railway Company v. Conley, 236 U. S. 605, 59 L. ed. 745, 35 Sup. Ct. 437 (1915).

It recognizes that the rates which it may establish pursuant to the resolution must yield to the carriers the return which the Court required in those cases. It proceeds to fix the rates upon that basis. As we shall show in a later portion of this argument, the rates prescribed by the Commission afford the carriers a substantial return over and above the costs properly assignable to the transportation of these commodities.

Of course, the carriers cannot properly claim the same percentage of profit on every sort of traffic. This is made clear by the Supreme Court in the two cases cited immediately above. In the former the Court said (pages 598-599):

> "The legislature undoubtedly has a wide range of discretion in the exercise of the power to prescribe reasonable charges, and it is not bound to fix uniform rates for all commodities, *or to secure the same percentage of profit on every sort of business.* * * *"
>
> (Emphasis supplied.)

In the *Conley* case the Court said (page 608):

> "* * * it is not necessary that there should be the same percentage of profit on every sort of business; * * *"

The same thought is expressed in

Atchison, Topeka & Santa Fe Railway Company v. United States, 203 Fed. 56 (Com. Ct. 1913),

wherein it is said (page 59):

> "* * * The carrier cannot complain of a violation of its constitutional rights if, not to favor some person or class, but for the general welfare, it is compelled to make a rate for some particular service which, though in excess of the out-of-pocket expense, would nevertheless be confiscatory if it were applied to all of its freight; that is, the carrier has no constitutional right to a rate for each distinct kind of service which will equal its proportionate share of the entire operating expenses. * * *"

That case was affirmed by the Supreme Court in a memorandum decision reported in 231 U. S. 736.

To the same effect is

Minneapolis & St. Louis Railroad Company v. Minnesota, 186 U. S. 257, 267, 46 L. ed. 1151, 22 Sup. Ct. 900 (1902).

At the very foundation of American railroad rate-making lies the principle that certain commodities must be carried at a small margin of profit while other commodities which can better afford it shall be transported at a relatively large profit to the carriers. The fact that in this proceeding the Commission may have placed the rates in the former class does not condemn its action.

F. Interpretation of "Freedom of Movement".

Appellants urge that the Commission has erroneously construed "freedom of movement", as used in the Hoch-Smith Resolution, to mean movement at a profit to the

shippers, regardless of the number of cars moving. It is argued that freedom of movement exists and that the Commission is wrong in concluding that this modest rate reduction is necessary to insure freedom of movement.

The record contains no finding by the Commission that freedom of movement does not exist unless the shipper is marketing his product at a profit. In fact, there was no such contention upon the part of the complainant.

It is true that the volume of the shipments has rapidly increased from 1917 to 1926. This increase is due to economic causes which are entirely dissociated from the rates involved in this case. The complainant before the Commission contended that increase in volume does not imply freedom of movement. These contentions are reflected in the Commission's report (R. 48), although the Commission has not in terms sustained them. The complainant has said that if these rates are so burdensome that the growers are continually in economic straits, and are harvesting and marketing their crops because they have no alternative, it is unreasonable to conclude that there is freedom of movement. In 1926 there was a definite check in the movement, and a drop of 8,000 carloads. (R. 48, 187, 223.) The evidence shows without contradiction—from official sources—that thousands of tons of grapes went unharvested in 1925, and again in 1926. (R. 48, 169, 190, 193, 378, 384.)

It is for the Commission to determine, as an experienced and expert tribunal, whether freedom of movement exists under the rates in effect. It had a sufficient record to justify the finding which it made.

6. Consideration of Section 15a of the Interstate Commerce Act.

It is contended that the Commission misconstrued the Hoch-Smith Resolution in that it failed to take into consideration section 15a of the Interstate Commerce Act.

The report expressly shows that the Commission did consider this section of the Act and that it quite properly concluded that nothing contained therein operated to prevent a reduction in these rates. The report summarizes the carriers' showing as to the rates of return on their property investments. (R. 51-53.) In turn, the Commission finds (R. 56):

> "* * * While all the defendants who handle the bulk of the deciduous-fruit traffic have not as yet made the fair return, their present financial condition is relatively strong. It seems clear that the reduction requested, if granted, would not affect the maintenance of adequate transportation service. * * *"

Section 15a expresses an objective. The Commission is not required to bring about in a year, or in any specified period, the net earnings contemplated by the statute. That would have been impossible. It was attempted by the great rate upheaval in 1920. The purpose failed, and admittedly because the rates as to many commodities were so high as to stifle the traffic. The carriers did not contend in the 1922 proceeding *(Reduced Rates, 1922,* 68 I. C. C. 676) that further advances should be made, even though the earnings were far below the returns contemplated by the statute.

Rate adjustments, even rate reductions, are not necessarily prejudicial to the carriers' revenue, both gross and

net. And it is no answer to the decision of the Commission here that the carriers of the western group may not yet have reached the full measure of earning power which the Commission is endeavoring to bring about. There has been vast improvement. The net earnings have risen from year to year, with slight checks now and then. The earnings of the year 1926 were far in excess of the earnings of 1922. (Exhibit No. 204, R. 458.)

This fact further should be noted, that the carriers made their showing on their book values. (R. 53, 461.) The Commission has never accepted the book values of the carriers as the criterion of real values. In the 1920 case it tentatively accepted the book values, less 10 per cent.

Increased Rates, 1920, (Ex Parte 74), 58 I. C. C. 220.

Section 15a of the Interstate Commerce Act was not intended to freeze all freight rates until such time as the carriers should be earning a fair return upon the aggregate value of their railway property. That section does not prevent the Commission from reducing particular rates which it finds unreasonable, although the carrier is not yet earning the fair return contemplated. Neither is the Commission compelled to give the carriers a certain return from a particular rate. These facts are made clear by the terms of section 15a itself and by the ruling of this Court.

The following proviso is found in paragraph (2) of section 15a of the Interstate Commerce Act—the very paragraph which announces the principle that rates shall be

so adjusted that the carriers will earn a fair return upon the aggregate value of their railway property:

> "*Provided*, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country."

Paragraph (17) of section 15a reflects the same intention.

In the case of

> *Dayton-Goose Creek Railway Company v. United States*, 263 U. S. 456, 68 L. ed. 388, 44 Sup. Ct. 169 (1924),

this Court said, in passing upon the constitutionality of section 15a (page 480):

> "• • • The statute does not require that the net return from all the rates shall affect the reasonableness of a particular rate or a class of rates. In such an inquiry, the Commission may have a regard to the service done, its intrinsic cost, or a comparison of it with other rates, and need not consider the total net return at all. Paragraph 17 of section 15a makes this clear."

Section 15a affords no valid ground for attack upon the present order of the Commission.

• • • • • • • •

Our discussion of the Hoch-Smith Resolution has been prolonged in order adequately to meet the several points urged by appellants in their effort to discredit the Commission's action and to destroy the Resolution.

We think it has been shown that the Resolution was properly construed by the Commission and that, as so construed, it violates no right of appellants under the laws or Constitution of the United States.

IV.

VALIDITY OF PRESCRIBED RATES.

The rates prescribed by the Commission for future application to the California deciduous fruit traffic have not been shown to be confiscatory.

The bill charges confiscation. We assume that this issue will be of more interest to the Court than any other. We propose to show that the carriers have not made their claim good.

Appellants' brief refers to "a cost study" which the carriers presented in evidence before the Commission. This reference to "a cost study" may lead to the inference that but a single cost study was offered. In point of fact, the carriers presented three separate cost studies. The record seems to indicates that it was the initial intention of the carriers to found this part of their case upon the two cost studies which have not even been grazed by appellants in their brief. Their reliance is now placed upon the third study only. We propose to review all three.

a. Inconsistencies between cost studies.

In the first of the cost studies which we shall consider, the so-called Wettling exhibit, (Defendants' Exhibit No.

179, R. 440-442), the statistician for the Western Lines developed a cost of $493.69 per car for the fruit movement from California to Chicago. In the so-called Conrad cost study (Defendants' Exhibit No. 252, R. 482-483), upon which appellants now rely, the indicated cost is $341.23.* The former exceeds the latter by some 45 per cent, a disparity of some moment. Furthermore, in the same Wettling cost study, the cost of moving fruit from Chicago to New York was set up as $230.79. A cost study offered by the Erie Railroad Company (Defendants' Exhibit No. 157, R. 386-397) developed a cost of $152.22 for the same service. The former exceeds the latter by 50 per cent—again a disparity of moment. These inconsistencies reveal the infirmities which are characteristic of cost studies of this type.

b. The Wettling cost study.

In Exhibit No. 179 the statistician for the Western Lines selected eight railway systems in the western district and four in the eastern district. In each instance he aggregated all of the freight transportation and maintenance costs of all of the systems. It will be noted immediately that all manner of traffic is included—main line, branch line, carload, less than carload, long haul, short haul, all commodities. (R. 443.) The total of these expenses was divided by the aggregate gross ton mileage

*Defendants' Exhibit No. 252 (R. 483) shows the cost per car as $350.23. At the hearing before the Commission counsel for the carriers stated that this figure improperly included $5.00 which represented the cost of repairs to refrigeration devices. (R. 483.) In their brief before the Commission the carriers indicated that $4.00 should likewise be deducted for supervision in connection with refrigeration. These items are not properly chargeable against the freight revenue. Consequently, the cost shown by Exhibit No. 252, as corrected by the carriers, is $341.23. The Commission so treated it. (R. 23.)

of the particular systems. The result was nothing other than the mean or average unit cost of handling all manner of freight on these systems. The derived unit was multiplied by the number of gross tons represented in a carload of deciduous fruit from California to Chicago, and in turn by the mileage. The result was set up as the cost of moving a carload of fruit. The same process was followed in the eastern district.

If such a unit cost were accepted, it would indicate that practically the entire movement of freight from California to the East is performed at a loss. Of course, such a conclusion would be palpably absurd.

We have stated that this compilation included all manner of traffic. It is notorious that the cost of handling less than carload traffic is many times as great per unit as the cost of handling carload traffic. The cost of branch line service is many times greater than the cost of main line service. Long haul operation is much more economical than short haul operation. The cost of handling different commodities varies. Costs vary inversely with the traffic density and are influenced by numerous other conditions.

Complacently ignoring these differentiating factors, the statistician proceeded to apply the mean or average unit cost against this deciduous fruit traffic, representing one of the longest hauls in the United States*, moving

*The weighted average haul of all California deciduous fruit is 2,970 miles (Defendants' Exhibit No. 166; Commission's Report, R. 20), whereas the average haul of all freight on all railroads in the United States is 325 miles (R. 443).

essentially in trainload lots, over main lines of railway, during the period of greatest traffic density and most favorable operating conditions. (See the Commission's report, R. 19-21.) The result thus obtained was tendered as the cost of the service. That the figures constitute a gross exaggeration of the actual cost will hardly require demonstration.

The Supreme Court has pointedly disapproved cost studies prepared in this fashion, because they assume that all branches of traffic and classes of service are handled at the same unit of expense. In

> *Northern Pacific Railway Company v. Department of Public Works of Washington*, 268 U. S. 39, 69 L. ed. 836, 45 Sup. Ct. 412 (1925),

the Supreme Court condemned an effort of the Washington Department of Public Works to determine the cost of hauling logs for short distances by the application of the mean unit cost of hauling all traffic. We quote from page 44 of the opinion:

> "* * * In this unit cost figure no account is taken of the differences in unit cost dependent, among other things, upon differences in the length of haul; in the character of the commodity; in the configuration of the country; in the density of the traffic; in the daily loaded car movement; in the extent of the empty car movement; in the nature of the equipment employed; in the extent to which the equipment is used; in the expenditures required for its maintenance. Main line and branch line freight, interstate and intrastate, carload and less than carload, are counted alike. The Department's error was fundamental in its nature. * * *"

These words are peculiarly pertinent here. To the same effect is the decision of the Supreme Court in

Chicago, Milwaukee & St. Paul Railway Company v. Public Utilities Commission, 274 U. S. 344, 71 L. ed. 1085, 47 Sup. Ct. 604 (1927).

c. Erie Railroad cost study (Defendants' Exhibit No. 157, R. 386-389).

The cost study of the Erie Railroad Company, Exhibit No. 157, was prepared in essentially similar fashion, except that it was confined to the line of the Erie Railroad from Chicago to New York. The witness for the Erie aggregated the freight expenses of the entire line, including the expenses of much branch line mileage, and covering all manner of traffic. Having obtained the mean or average unit cost, he applied it to the through haul here involved, viz., a solid trainload movement from Chicago to New York (R. 373). The witness admitted expressly that he had obtained merely the mean or average unit cost of handling all traffic. We quote a question and answer from his testimony (R. 398):

> "Q. So this, then, is the mean or average cost of transporting all traffic including local, interline, long haul and short haul, main line and branch line, carload and less than carload.
>
> A. Yes, sir."

Of course, an extravagent figure was obtained. The result is condemned by the same Supreme Court ruling to which we have referred.

d. Conrad Cost Study (Defendants' Exhibit No. 252, R. 482.)

The extremities of the appellants have compelled them to turn to the Conrad cost study (Defendants' Exhibit No. 252, R. 482)*. This "study" consists of a single sheet of figures, presented upon the final day of the hearing with explanatory testimony of the most casual and limited character. (R. 475-482.) It is difficult to believe that it was seriously offered, since it was not accompanied by supporting data of any character. There was no tender of working papers, neither was opportunity afforded to check the methods or details of the calculation. In commenting upon the insufficiency of the study the Commission said (R. 54):

> "No details are given in the cost study so that a check can be made as to the mechanical or clerical accuracy of the results. * * *"

The Commission's report includes a review of the cost study, and apparently a slight error was made in its analysis. This error was called to the Commission's attention and correction was made in the report upon further consideration (R. 65-69). The Commission then took occasion to point out additional defects in the cost study and refused to accept it as indicative of the actual expense of handling the traffic.

In these circumstances the carriers seek to find occasion to press for the acceptance of the cost study. The other studies are permitted to pass into the discard. We pro-

*Throughout our discussion, in view of the corrections made by the carriers and explained above, we shall consider that the purported cost reflected by Exhibit No. 252 is $341.23 per car, instead of $350.23.

pose to show that this study is permeated with fallacy, that it grossly distorts and exaggerates the cost of transportation, and that it has no claim to the confidence of the Court.

Preliminarily, it should be understood that *the appellants are seeking to force the acceptance of costs prevailing in the year 1923, although the record shows that in 1926 the unit costs had materially declined.* It should be noted further that *the cost study is confined to a single railroad* (The A. T. & S. F. Railway Company), the assumption being conveniently indulged that the same costs are prevalent on other lines. With equal complacency it is *assumed that the cost per mile east of Chicago is equal to the cost per mile west of Chicago.* The law permits no such easy generalization.

We shall address ourselves, first, to the specific fallacies which inhere in this cost study and shall consider finally the essential invalidity of its processes as a matter of law.

Particular Fallacies in Conrad Cost Study.

The several errors which appear to be of moment in this connection will be catalogued with such brevity as adequate treatment will permit.

(1) *Unwarranted use of 1923 costs.*

The Conrad cost study is predicated upon 1923 costs. (R. 475, 482.) The carriers are asking the Court to accept as controlling a study built upon 1923 costs, although the record in this case, including the carriers' own exhibits,

shows conclusively that 1923 costs, both unit and total, were much higher than in 1926.

We shall refer first to one of the carriers' exhibits in this record, Exhibit No. 204, (R. 458), which includes the carriers' own selection of lines. This exhibit shows that in 1923 the maintenance of equipment expenses for the entire Santa Fe system reached the high figure of $57,605,000. By 1926 these expenses had fallen to $47,424,000, a decline of more than $10,000,000. For the systems in their entirety, the total maintenance of equipment expenses in 1923 were $863,234,000, while in 1926 they were but $744,763,000, a decline of more than $118,000,000.

Still referring to the carriers' Exhibit No. 204, the total operating expenses of the Santa Fe declined by $4,300,000 from 1923 to 1926, in spite of an increase of over $20,000,000 in total operating revenues during the same period. The aggregate operating expenses of all of the systems shown on the exhibit were more than $154,000,000 lower in 1926 than in 1923, whereas total operating revenues declined by only $4,426,000 during the same period. Other exhibits offered by the carriers indicate similar results.

We pass in turn to an exhibit of the Railroad Commission of California in this case, Exhibit No. 6, (R. 198, fol. 261.) This exhibit shows that maintenance of equipment costs on the Santa Fe in 1923 amounted to $48,967,937. In 1926 they had fallen to $38,356,068, a decline of $10,611,869, or approximately 22 per cent. The operating ratio fell from 71.6 per cent in 1923 to 64.4 per cent in 1926. This evidences the decline in costs, both on the whole and by units.

It is enough to say that upon the carriers' own showing in this case they are not entitled to demand the acceptance as a criterion of costs today, or for the future, cost units derived for the year 1923, a year of relatively very much higher costs. It is quite probable that the high costs for maintenance of equipment in 1923 were due in large part to the shopmen's strike of the preceding year. But whatever the explanation may be, the year 1923 does not offer a proper criterion of existing costs. There is a decline from 1923 to 1926 of something over 20 per cent in maintenance of equipment cost. Loss and damage payments were decidedly higher in 1922 and 1923 than in subsequent years. (R. 498.) Allowance for this decline in expenses will cut a substantial sum from this set-up of costs.

(2) *Limited scope of the cost study.*

The study upon which Exhibit No. 252 is based was not comprehensive enough to render the results of the study representative of the average cost of moving a car of deciduous fruit from points in California to eastern defined territories.

First, the number of cars studied was but 521 cars (R. 476) out of 69,777 cars of California deciduous fruit which moved in 1923. (78,803 cars moved in 1926.) (R. 223.) This number is, of course, too small to reflect a fair average of costs.

Second, all of the 521 shipments covered by the study originated within a period of 20 days in the month of September, 1923. (R. 476.) The period covered by this

movement is not one which affords a mean or average of costs prevailing throughout the deciduous fruit shipping period, which commences in June and continues into December. (R. 21.)

Third, the study is confined to transportation on the transcontinental line of one carrier, The Atchison, Topeka and Santa Fe Railway Company, whereas the 69,777 cars of deciduous fruits moving in 1923 from California to eastern defined territories moved over the systems of three main originating carriers and their connections. (R. 19.) This Court has pointed out that when the cost of transportation over several lines of railroad is involved, the cost over each line must be shown specifically. The failure to show costs in this manner was one of the objections to the study condemned in

Northern Pacific Railway Company v. Department of Public Works of Washington, supra.

We quote from pages 43 and 44 of the opinion:

> "*A precise issue was the cost on each railroad of transporting logs in carload lots in western Washington*, the average haul on each system being not more than 32 miles. In using the above composite figure in the determination of this issue the Department necessarily ignored, in the first place, the differences in the average unit cost on the several systems; * * *." (Emphasis supplied.)

Fourth, the study does not relate to the cost of any operation or the movement of deciduous fruit east of Chicago. The cost of the movement east of Chicago is assumed to be the same per car-mile as the cost on the

Santa Fe west of Chicago. No evidence is offered nor is any attempt made to justify this assumption.

(3) *Arbitrary allocation of expenses not directly assignable.*

Maintenance of way expenses, overhead, general expenses and all charges not susceptible of direct assignment have been allocated to this traffic on a purely arbitrary basis in many instances in direct proportion to the gross ton mileage. (R. 476-478, 487.) *Such an allocation assumes that all indirect costs must be borne by the several branches of traffic in equal measure.*

Furthermore, the record shows that the total direct cost for fuel and trainmen's and enginemen's wages from Bakersfield, California, to Chicago, for one of the grape trains included in the study, inclusive of the empty return haul, was $3,076.26 (R. 489), or $55.92 per car, assuming a train of 55 cars.* Comparing this figure with the figures in Exhibit No. 252, *it appears that the total direct cost for fuel and trainmen's and enginemen's wages amounts to only 16.39 per cent of the purported operating expenses incurred in hauling a car of grapes from California to Chicago. In other words, expenses not directly assignable represent more than 83 per cent of the purported cost per car shown in Exhibit No. 252. The ratio of direct costs is so low as to indicate that expenses not susceptible of direct allocation have been excessively assigned to this traffic.*

*The carriers' own testimony before the Commission indicates that the average number of cars in a deciduous fruit train is probably in excess of 55 cars. (R. 205-206, 331, 373, 404.)

(4) *Weight of load not representative.*

The Conrad cost study purports to reflect the cost of hauling a car of grapes from California to Chicago. (R. 475-476, 482-483.) It will be noted from Defendants' Exhibit No. 166 (R. 412, fol. 632) that the average weight of the paying load of grapes materially exceeds that of other deciduous fruit. The former likewise exceeded the average carload weight of *all* deciduous fruit by some 500 pounds in 1926. Consequently, Exhibit No. 252 shows a cost in excess of the average cost of hauling all deciduous fruit by reason of the fact that certain indirect costs have been assigned on a gross ton mileage basis (R. 477) and fuel costs, which have been directly assigned (R. 476), vary with the weight of the load.

(5) *Excessive costs on the originating or Valley Division.*

An effort was made to determine the cost of handling these grape cars on the originating or Valley Division in California—the division which precedes the movement from Bakersfield, California, to the East. In attempting to arrive at this expense, the witness included all local freight costs on the division, deducting the cost of moving through trains, and reduced them to a unit. This unit cost was applied to the fruit movement to Bakersfield, the concentration point. (R. 479, 484.) Here, again, the costs which were so aggregated comprehend carload and less than carload freight, and commodities of every character moving for varying distances under diverse conditions. (R. 484.) For the reasons which we have previously pointed out, and which this Court has clearly stated, the cost of moving this carload freight cannot be determined

by taking the mean or average cost of moving all traffic, including less than carloads.

Northern Pacific Railway Company v. Department of Public Works of Washington, supra;
Chicago, Milwaukee & St. Paul Railway Company v. Public Utilities Commission, supra.

This is the identical objection which we have urged before. The result of using this mean or average unit cost was to produce a very much higher cost on this division than on the main lines beyond Bakersfield—35 cents per car-mile as compared with a weighted average of 13 cents per car-mile on the main line. (R. 482.)

(6) *Improper inclusion of cost of ice-haulage.*

For the movement of these trains from Bakersfield to Chicago, transportation costs were directly determined and assigned. The actual fuel costs and wages of trainmen and enginemen in connection with the movement of the trains studied were determined and set up in their entirety against this freight movement. (R. 476, 484-485.) The transportation of deciduous fruit comprehends not only the movement of the fruit but likewise the movement of the ice in the bunkers of the refrigerator cars, used for refrigeration service. There are two distinct charges in connection with the deciduous fruit traffic: first, there is the freight rate—$1.73 per 100 pounds at the time of the Commission's order; and, second, there is a refrigeration charge, a stated charge per car—e. g., $105 to New York—for refrigeration service. Aside from the cost of the ice itself, the refrigeration charge includes compensation for the following elements:

1. *Cost of hauling the ice in the bunkers of the refrigerator cars.*
2. Switching the cars to and from stations for the purpose of placing ice in the bunkers.
3. Repairs to the refrigeration devices of the cars.
4. Supervision in connection with refrigeration.

This is clearly shown by the decisions of the Interstate Commerce Commission in

Arlington Heights Fruit Exchange v. Southern Pacific Company, 20 I. C. C. 106 (1911);

Railroad Commission of California v. Alabama Great Southern Railroad Company, 32 I. C. C. 17 (1914);

Perishable Freight Investigation, 56 I. C. C. 449 (1920).

It will be recalled that the carriers expressly deducted from the cost shown by Exhibit No. 252 the expense incurred in connection with all of these items except the cost of hauling the ice in the bunkers of the refrigerator cars. The Commission allows and the carriers receive compensation for the haulage of that ice in the stated refrigeration charge. This element of cost should have been deducted along with the cost of switching to and from icing stations, repairs to refrigeration devices and supervision.* Accordingly, when the witness by this study

*Counsel for the carriers expressly stated earlier in the hearing before the Commission that costs incident to the icing service are included in the refrigeration charge and are not a matter of expense in connection with the freight service. We quote from the statement of the evidence before the Commission, at page 358 of the Record herein: "Counsel for the carriers stated that the carriers do not intend to use the icing service in justification of the freight rates on deciduous fruits, because that service is properly included in the refrigeration charge, and it is not intended to create the inference that such service is really a matter of expense on the freight service."

determines the entire transportation cost from Bakersfield to Chicago and assigns it to the freight service and charges it against the freight rate, the carriers are thereby receiving a duplicate compensation to the extent that a part of that cost is in the stated refrigeration charge.

The cost of hauling the ice is of no little moment, amounting to approximately $40 per car for the weighted average transcontinental haul of deciduous fruit. That amount should be deducted from the purported cost per car reflected by the Conrad study.

During the pre-war period the cost of ice haulage from California to Chicago was determined by the Commission to be $22.50 per car.

> *Railroad Commission of California v. Alabama Great Southern Railroad Company, supra.*

Converted to present day price levels on the basis of a 50 per cent increase in costs since the pre-war period and extended for the weighted average haul, the cost of hauling this ice is more than $40 per car.

(7) *Excessive allocation of car repairs and depreciation.*

The estimated cost of car repairs and depreciation is excessive by reason of an allocation which is wholly improper. The theory of the witness was that since refrigerator car costs are, on the average, 10 per cent above the cost of repairing other equipment, it is proper to make the charge here 10 per cent in excess of the charge on other equipment. But the allocation is made upon a car-mile basis. (R. 477.) This immediately inflates and

exaggerates the cost, because the mileage made by refrigerator cars per day is greater than the mileage made by other equipment.

(8) *Empty car haul included in excessive measure.*

In compiling Exhibit No. 252 the carriers have likewise used an excessive percentage for the empty car haul. The cost of moving the loaded cars eastbound was charged with the expense incurred in hauling 81.5 per cent of that number of cars westbound empty. (R. 478.) That figure purports to represent the proportion of the particular 521 cars included in the study which moved westbound empty on the trip immediately preceding the loaded eastbound movement which was studied. (R. 478.) The carriers' Exhibit No. 210 (R. 470-471), introduced in evidence in this proceeding by the same witness who presented this cost study, shows that the empty car ratio which was used in Exhibit No. 252 was 4 per cent higher than the corresponding ratio on the line of the Santa Fe for the whole of the same month in which the cars included in Exhibit No. 252 moved, namely September, 1923. It also appears from Exhibit No. 210 that a large portion of the deciduous fruit shipped from California to the East moves at times when the percentage of empty to total movement of refrigerator cars westbound is considerably below that used in compiling the Conrad cost study.

It is obvious that the ratio of empty to total movement of refrigerator cars westbound which should be used in a cost study purporting to show the cost of transporting deciduous fruit in the year 1923 on the Santa Fe Railway is the annual percentage of empty to total westbound

movement on that railway in 1923.* Exhibit No. 210 indicates that the latter figure is 70.34 per cent. Consequently, 70.34 per cent should have been used as the empty car ratio, instead of 81.5 per cent, in compiling this cost study.

The effect of this error on the part of the carriers is to exaggerate by over 15 per cent the cost of the empty return movement of refrigerator cars which is properly chargeable to the movement of deciduous fruit from California to the East.

In addition to using an excessive ratio in determining the cost of the empty return haul, the carriers have included in the purported cost of the empty haul items which should have been excluded. We have pointed out that Exhibit No. 252 indicates that $2.45 was deducted from the final cost per car as representing the cost of switching cars to and from icing platforms and not properly chargeable against the freight service. Similarly, counsel for the carriers stated in the proceeding before the Commission that $5 should be deducted for repairs to refrigeration devices and $4 for supervision in connection with refrigeration. It will be noted that none of these charges was deducted until after the cost of the empty return haul had been computed. Consequently, Exhibit No. 252 includes as part of the cost of the empty return haul 81.5 per cent of the total charges which are properly assignable to the refrigeration service. This, of

*The testimony of the manager of the Santa Fe Refrigerator Department before the Commission indicates that this is the proper manner in which to determine the empty car costs assignable to the deciduous fruit movement. We quote from the statement of his testimony at page 347 of the Record herein: "The empty westbound movement of refrigerator cars in December is chargeable to all the perishable traffic moving from California, including deciduous fruits."

course, applies with equal force to the cost of hauling the ice in the bunkers, which was not even deducted in the final instance. It is clear that none of these refrigeration costs is incurred when the car moves empty. The total costs assignable to refrigeration which have been included in Exhibit No. 252, representing only the haul to Chicago, amount to approximately $45.20. Consequently, the carriers' failure to deduct these costs in computing the cost of the empty return haul results in an exaggeration of $36.84 in the total expense per car shown on Exhibit No. 252. *This amounts to an error of $46.92 per car in the purported cost for the weighted average haul of 2970 miles.*

(9) *Inclusion of arbitrary percentage of cost of handling company material.*

It appears from the testimony of the witness who prepared this cost study that after all other costs included in the study had been determined, 10 per cent of that amount was added to represent the expense of handling company material. (R. 478.) It is questionable whether the percentage used is not excessive. It is certain, however, that the method adopted by the witness resulted in an exaggeration of the costs properly assignable to this traffic. We have seen that the purported cost of both the loaded and the empty hauls includes charges properly assignable to the refrigeration service. Some of these were deducted in the final instance and others were never deducted. None was deducted, however, before the cost of hauling company material was determined. Conse-

quently, the figure purporting to represent the cost of hauling company material in fact includes elements which are not chargeable against the freight service.

(10) *Improper extension of cost for weighted average haul.*

Exhibit No. 252 purports to show the cost per car for the movement from California to Chicago, a distance of 2331 miles. The carriers derive their purported cost per car for the weighted average haul of California deciduous fruit, 2970 miles, by multiplying the cost per car-mile derived in Exhibit No. 252 by 2970.

In extending the purported cost developed by Exhibit No. 252 for a haul of 2970 miles, loss and damage costs have improperly been increased. It appears from Exhibit No. 252 and the testimony of Witness Conrad (R. 478) that $7.43 represents the loss and damage cost per car, regardless of the length of the movement. Such loss and damage costs should remain at $7.43 per car even though the length of the haul is increased from 2331 miles, the distance from California to Chicago, to 2970 miles, the length of the weighted average haul.

The cost of handling these cars on the expensive originating division of the Santa Fe has likewise been improperly treated in extending the cost to a distance of 2970 miles. The cost on this division has been included in determining the cost per car-mile, whereas the originating division should have been treated separately in extending the purported cost for the total haul of 2970 miles.

Essential Invalidity of Processes Followed in Cost Study.

In the course of the preceding analysis of the methods employed in the development of the cost study we referred to the "arbitrary allocation of expenses not directly assignable". We readily grant that every considerable branch of traffic must be subject to rates which will return all of the costs which are directly assignable, a fair proportion of expenses which cannot be directly assigned, and which will also provide a reasonable contribution to profit. But the law does not require that all traffic shall contribute ratably to indirect or non-assignable expenses. If such were the requirement, rates upon all commodities would tend to uniformity, an end which, as previously shown, is impossible of attainment. The Conrad cost study presupposes that all such indirect expenses shall be allocated to the fruit traffic in direct proportion to some arbitrary formula such as relative gross ton mileage. Only by this allocation can the semblance of an unremunerative rate be shown. The decisions of the Court lend no sanction to this arbitrary scheme of allocation. The cases of

Northern Pacific Railway Company v. North Dakota, 236 U. S. 585, 59 L. ed. 735, 35 Sup. Ct. 429 (1915),

Atchison, Topeka & Santa Fe Railway Company v. United States, 203 Fed. 56 (Com. Ct. 1913), affirmed in 231 U. S. 736,

show beyond question that the carrier cannot demand as a matter of constitutional right that all traffic shall con-

tribute ratably to the indirect or nonassignable expenses. In the former case the Supreme Court said (page 597):

> "* * * This, of course, does not mean that all commodities are to be treated as carried at the same rate of expense. The outlays that exclusively pertain to a given class of traffic must be assigned to that class, and the other expenses must be fairly apportioned. * * *"

In the latter case it is said (page 59):

> "* * * the carrier has no constitutional right to a rate for each distinct kind of service which will equal its proportionate share of the entire operating expenses. * * *"

Certainly, in view of these declarations by the Courts, proof is required to support the allocation adopted by the carriers. No such proof was offered. It must be apparent that the method pursued by the carriers charges against the deciduous fruit traffic an undue proportion of these indirect expenses and includes many items of expense which are in no way related to that traffic.

The contention has not and manifestly cannot be made that the rates prescribed by the Commission for the deciduous fruit movement are insufficient to yield the direct cost of the service, a fair proportion of indirect costs, and a reasonable margin for profit.

The fallacies of the Conrad cost study which we have pointed out should suffice to show that it cannot possibly support the claim of confiscation. When the errors which

we have indicated are corrected, the study will show, not that this traffic is carried without compensation, but that it is in fact, more highly profitable than the Commission itself realized.*

The appellants state that "The carriers' cost study was the only direct and persuasive evidence as to costs and afforded the best possible evidence and in fact the only substantial evidence as to what was a lawful rate." (Brief of appellants, page 183.) The implication is that the Commission was required to accept the purported costs shown by the Conrad study because that afforded the most specific evidence as to costs. The futility of this argument is apparent when it is realized that it would require the Commission to accept as valid the Wettling and Erie Railroad cost studies if the Conrad exhibit had not been offered. The weight to be accorded the evidence is a matter for the Commission to determine. It is not required to accept a cost study as valid. We quote from the Court's opinion in

Atchison, Topeka & Santa Fe Railway Company v. United States, supra.

"That the Commission, in reaching this conclusion, failed to follow the expert evidence offered by the railroads in the matter of proportionate operating cost would not justify this court in annulling the order, especially as it is concededly impossible to determine with accuracy the fair proportionate cost of transporting any single kind of merchandise." (Pages 58-59.)

*We may be permitted to draw the Court's particular attention to the fact that the carriers refrained from presenting any cost studies to the District Court although ample time for their preparation was available between the date when the bill was filed and the date of the final hearing.

The Commission did not accept this study of cost, even in its first report. In its report on further consideration it particularly criticized several elements of obvious error. It rightfully rejected the cost study, saying (R. 67):

> "But we have not accepted the cost study as indicating precisely the actual expense of handling this traffic. * * *"

It is said repeatedly in appellants' brief that the Commission intentionally undertook to fix a rate that was "slightly in excess of operating expenses". (Brief of appellants, pp. 41, 68, 73, 110.) Again it is said that the Commission intentionally fixed a rate "barely above the point of confiscation". (Brief of appellants, p. 78.) The Commission's report does not warrant this characterization. The Commission said, in reply to the carriers' petition for reconsideration, that *if* the carriers' cost study were accepted it would appear that the new rates are slightly above operating expenses. But such was not the view of the Commission, since it rejected the carriers' cost study.

The appellants cite (Brief, pp. 166-167) the cases of

Banton v. Belt Line Railway Corporation, 268 U. S. 413, 69 L. ed. 1020, 45 Sup. Ct. 534 (1925);

Northern Pacific Railway Company v. North Dakota, supra;

Norfolk & Western Railway Company v. Conley, supra.

We do not take exception to the principles announced therein. The Commission's decision is in accordance with

those cases. Our objection is that a disproportionate share of operating expenses has been assigned to the deciduous fruit traffic.

There is external evidence affording another reason for rejecting this remarkable cost study. These transcontinental carriers enjoy their highest *net* earnings when the fruit movement is at the peak. (R. fol. 384-389; R. 242, 243, 373.) This is particularly noticeable in the case of such a carrier as The Western Pacific Railroad Company, whose fruit traffic represents such a large proportion of its total tonnage. As soon as its rails are crowded with fruit the net earnings rise. (Exhibits Nos. 50, 51, R. fol. 385, 387.) It will be noted that we are referring to *net* earnings, and not to gross earnings. Operating conditions are most favorable during the period when this vast fruit traffic is moving to the East. (R. 39, 241-243; Exhibits Nos. 48, 49; R. 350, 403, 408.) As the Commission has pointed out (R. 38), increased volume of tonnage properly makes for some decline in rates. The rule which the carriers would invoke is just the reverse.

The appellants contrast a supposed profit of $10.00 per car with a 6 per cent return of $15.00 upon the cost of a refrigerator car. (Brief of appellants, p. 176.) This is a naive diversion. It fails to be convincing for two reasons: *First*, it assumes the validity of the Conrad cost study; *second, it ignores the dual earning power of the refrigerator car—i. e., under the freight rate and, in turn, under the refrigeration charge.*

One additional feature should be noted in connection with appellants' charge of confiscation. The carriers are

seeking to have this Court declare these rates confiscatory solely upon the basis of evidence which was presented prior to operation under the prescribed rates. There is nothing before the Court which indicates the effect of actual operation under the rates.

The courts have evidenced extreme reluctance to set aside orders made by competent rate-making bodies, particularly by such an experienced tribunal as the Interstate Commerce Commission, in advance of a fair test of their propriety. This Court has, time and again, required the carriers to put the rates to a test. This course was required in the case of

Northern Pacific Railway Company v. North Dakota, 216 U. S. 579, 54 L. ed. 624, 30 Sup. Ct. 423 (1910).

In the first instance the Court refused to annul the rates in default of a test of the rates. After a test of one year the carriers were able to present the results of actual experience. The Court then annulled the rates.

Northern Pacific Railway Company v. North Dakota, 236 U. S. 585, 59 L. ed. 735, 35 Sup. Ct. 429 (1915).

Similarly, in

Knoxville v. Knoxville Water Company, 212 U. S. 1, 53 L. ed. 371, 29 Sup. Ct. 148 (1909);

Willcox v. Consolidated Gas Company, 212 U. S. 19, 53 L. ed. 382, 29 Sup. Ct. 192 (1909);

Darnell v. Edwards, 244 U. S. 564, 61 L. ed. 1317, 37 Sup. Ct. 701 (1917),

this Court refused to condemn the rates without having before it the results of a fair trial.

In the present case the carriers have been unwilling to submit these rates to the test of experience. It is perfectly clear, as we have shown, that the decline in revenue per car will not exceed $9.42, the difference between $489.42 and $480. It is not certain that there will be any decline. The carriers give no consideration to the stimulus to traffic which usually comes from a rate reduction. They are not willing to find out the actual effect of the increase in minimum carload weight. They treat it as if it did not exist and as though this were a rate reduction without any compensating advantage to them. They ask the Court to rely upon forecast merely, upon their prophecy as to the effect of this reduction in rates, and decline to give this very moderate rate reduction the test of actual experience.

V.

FINDINGS AND ORDER OF THE COMMISSION.

The Findings of the Commission are Supported by the Record and the Order is Sustained by the Findings.

The bill alleges that the Commission's findings are not supported by the record and that the order is not sustained by the findings. This charge, however, does not appear to be seriously pressed. We think it unnecessary to devote space to an elaborate review of the record in relation to the Commission's report.

On pages 102 to 107, inclusive, of their brief, the appellants criticize certain rate comparisons of complainant as

insufficient to show that the existing rates were unreasonable. It is their apparent intent to have these rate comparisons considered in dissociation from all of the other evidence which was before the Commission. No mention is made of the fact that deciduous fruit moves in solid trainloads and almost entirely over main lines. (R. 39). The deciduous fruit movement occurs at the time of most favorable operating conditions and greatest traffic density, a fact which is conducive to minimum unit operating costs. (R. 21, 39.) Furthermore, the deciduous fruit movement is notably persistent; from June 15 to November 20, 1926, there were only nine days upon which less than 100 cars of deciduous fruit were originated by the Southern Pacific and Western Pacific for eastbound movement. (R. 38.) The volume of movement is important (R. 38); deciduous fruit shipments comprise the largest single item of transcontinental tonnage. (R. 18.) It is a well recognized principle of rate-making that ton-mile earnings decrease as the length of the haul increases, by reason of the spreading of terminal costs over a greater distance. We have already pointed out that the deciduous fruit movement represents one of the longest hauls in the United States. These are some of the "unusual characteristics"* of the California deciduous fruit traffic which are not common to the other perishable traffic referred to by appellants upon pages 102 and 103 of their brief. All of the features which we have mentioned make for relatively lower rates in the case of deciduous fruit.

*In the statement of facts appearing in their brief, the appellants mention what they consider to be "unusual characteristics" of the deciduous fruit traffic. (Brief of appellants, pages 5-8). It should be borne in mind that the so-called "unusual characteristics" which the appellants list are not confined to the deciduous fruit traffic, but are common to all of the perishable traffic moving from California.

Similarly the appellants have omitted to mention traffic and transportation conditions which must be considered in comparing the rates on deciduous fruit with those on bananas, cocoanuts, and pineapples. (Brief of appellants, pages 103-104). The Commission's report shows that the Commission properly considered all of these matters, including the contention of the carriers that the banana rates were affected by water competition. (R. 32-34). The weight to be accorded this contention was a matter within the exclusive province of the Commission. The record (R. 245-257, Exhibits Nos. 62-72; R. 499-501, Exhibit No. 256) shows that both the minimum and average carload weights incident to the movement of bananas, cocoanuts and pineapples from Gulf ports are considerably below those of deciduous fruit. The average number of cars in a banana train is substantially less than in a deciduous fruit train. Bananas and cocoanuts are transported under faster schedule than are California deciduous fruits. In connection with bananas, cocoanuts and pineapples, the carriers accord free transportation of caretakers, racks, and 400 pounds of straw. In spite of all of these factors which would be expected to result in relatively lower rates in the case of deciduous fruit, *the earnings per car, per car-mile and per gross ton-mile are substantially higher under the existing rates on deciduous fruit than under the banana, cocoanut and pineapple rates.** In fact a trainload

*Exhibit No. 64 (R. 250) shows the rates on bananas and cocoanuts from New Orleans and other Gulf ports to Portland, Oregon, Spokane and Seattle, Washington, Vancouver, B.C., and Los Angeles and San Francisco, California. The average haul is shown to be 2964.8 miles, or approximately the same as the weighted average haul of California deciduous fruit, as found by the Commission (R. 31). The rate is uniformly $1.875 per hundred pounds, subject to a minimum of 20,000 pounds, and the gross car earnings are shown to be $378.56. *After deducting the terminal charges at New Orleans, which are absorbed by the line-haul carriers, the car earnings become $360.02, or materi-*

of the latter traffic yields a gross revenue of but $15,000, as compared with $29,000 derived from a trainload of California deciduous fruit. (See R. 32-34). Upon the basis of such evidence alone the Commission could readily have found the existing deciduous fruit rates unreasonable.

In addition to all of this evidence, the complainant offered comparisons of relative increases in rate levels on deciduous fruit and other commodities since June 24, 1918, —the pre-war basis. (See R. 36-37.) As compared with an increase of 50.4 per cent in the deciduous fruit rates since that date, the rates on eastbound transcontinental traffic are, on the average, but 29 per cent above the June 24, 1918, basis, while the westbound rates are only 22 per cent above that basis. This showing included 75 commodities moving eastbound and 65 commodities moving westbound. These particular rate exhibits were admitted by the carriers to represent a fair "cross-section" of the transcontinental traffic. (R. 36, 464, 467.) The relative levels of import and export rates from and to Pacific Coast ports, of rates in Mountain-Pacific territory, and of eastbound transcontinental rates on lumber, petroleum and citrus fruit were likewise shown. The existing rates on the latter were but 23, 25 and 35 per cent, respectively, in excess of the June 24, 1918, rates, as compared with an increase of 50.4 per cent in the rates on deciduous fruit.

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ally less than the carload revenue of $489.42 which the Commission found was yielded by the California deciduous fruit rates. The car-mile earnings yielded by the rates on bananas and cocoanuts here shown are found to be 12.7 cents, reduced to 12.1 cents after deducting New Orleans terminal charges. The latter figure falls far below the car-mile earnings of 16.5 cents found by the Commission in the case of California deciduous fruit (R. 31). The gross ton-mile earnings yielded by these banana and cocoanut rates are 3.63 mills, which become 3.45 mills after deducting the terminal charges. The latter figure is substantially below the corresponding earnings of 4.1 mills derived from the movement of California deciduous fruit (R. 31).

The carriers offered evidence in an effort to overcome this showing. The Commission's report shows that it took all this evidence into consideration in reaching its conclusions. (R. 36, 37.) The weight to be accorded this showing was, again, a matter for the Commission, rather than for the Court, to determine.

The appellants do not refer to the complainant's showing as to the relative levels of eastbound transcontinental express rates on fruits, berries, vegetables, butter and eggs. In *Express Rates, 1922*, 83 I. C. C. 606, 89 I. C. C. 297, the Commission ordered a reduction in these rates to a point but 27.6 per cent in excess of the pre-war basis. (R. 37-38). The appellants disregard this showing.

We have already referred to the enormous amount of evidence bearing upon rates which was before the Commission. The nature of the evidence has been summarized. A reading of the record upon which the Commission based its rate findings will suffice to show that there is abundant support for the Commission's conclusion. The case of

> *Interstate Commerce Commission v. Union Pacific Railroad, supra,*

is pertinent in this connection. We quote from page 550 of the Supreme Court's opinion:

> "* * * * For there is no possibility of solving the question as though it were a mathematical problem to which there could be only one correct answer. *Still there was in this mass of facts that out of which experts could have named a rate. The law makes the Commission's findings of such facts conclusive.*" (Emphasis supplied)

The point is advanced by the appellants for the first time in their brief that the Commission erroneously construed the Hoch-Smith Resolution as authorizing it to find without substantial evidence that the existing rate was unreasonable, and that the new rate was the lowest possible lawful rate. (Brief of appellants, pages 100-110.) This alleged misconstruction of the Resolution does not appear among the appellants' assignments of error. (R. 109-125.) Our answer is that the text of the report affords no warrant for this criticism.

In certain minor particulars the appellants complain of various findings which reflect evidence responsive to the terms of the Hoch-Smith Resolution. We have taken note of most of these criticisms in the course of our discussion of the Resolution. The remainder may be disposed of summarily.

It is represented that the Commission failed to find that there was a depression in the whole of the deciduous fruit industry. (Brief of appellants, page 11.) This criticism seems to us to be purely captious. By way of reply it will suffice to quote the following from page 95 of the brief of appellants:

> "That the deciduous fruit industry in California is in a state of depression is a fact beyond dispute."

The Commission did not find, as appellants represent, that there is no depression in the business of producing peaches, apricots and cherries. It did find that there had been some improvement in the market prices of these fruits, but it found no absence of depression. In point of fact, the depression extends throughout the industry. The

record so shows and the Commission so found. (R. 25, 56, 58, 59.)

The appellants state that the complainant failed to show "the general and comparative levels in market value of the various classes and kinds of commodities over a reasonable period of years." (Brief of appellants, page 154.) In fact, a showing was made of the comparative market prices of deciduous fruits over a ten-year period. (R. 23, 225, 228.) Included in the complainant's showing, furthermore, were the comparative farm values of citrus fruit, apples, vegetables and almost every other agricultural product in the State of California. (R. 22, 210, 214.) In addition, the ten principal field crops of the United States were included, covering a period of eight years. (R. 179, 212, 214.) This information was derived in part from reports of the United States Department of Agriculture. The course of those prices was plotted in relation to the course of the prices of deciduous fruits and these other California commodities. (R. 178, 179, 210, 215.) The showing was most comprehensive. Its representative character was not challenged.

Brief reference should probably be made to the appellants' contention that the Commission construed the Hoch-Smith Resolution as placing upon the carriers the burden of proving that the old rate was the lowest possible lawful rate and that the new rate was lower than the lowest possible lawful rate. (Brief of appellants, pages 100, 110, 112.) An examination of the Commission's report will fail to disclose any such irregular observation with respect to the burden of proof. The appellants endeavor to gain

support for their argument from the latter portion of the following statement contained in the Commission's report upon further consideration (R. 68):

> "On the whole record, we adhere to our former finding that the present rates are unreasonable and we are not convinced that the rates prescribed are below what are necessary to afford complainants the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

It should be borne in mind that this statement does not appear in the original report, *but was responsive to the carriers' petition for reconsideration of the original decision.* Of course, upon such a petition the carriers had the burden of convincing the Commission that its prior findings were erroneous.

The appellants quote various other fragments from the Commission's report to sustain their claim that the Commission imposed upon them the burden of proof. (Brief of appellants, pages 111, 112.) When the report is read in its entirety, it is seen that the appellants have sought to give these fragments a meaning never intended by the Commission. It will be recalled that in an earlier portion of their brief the appellants state that the language of the Commission "cannot acquire a meaning never intended by the Commission, by being lifted out of its context and segregated from the remainder of the report." (Brief of appellants, page 49.) There is nothing in the Commission's report which remotely justifies the appellants' claim that the Commission imposed upon the carriers the "burden of proof."

The findings faithfully reflect the record. The Commission's report is singularly free from error of any description. The order in turn rests upon a firm foundation. We shall rest here with the declaration that the Commission's report presents the essential matters of record in comprehensive and impartial fashion.

VI.

SCOPE OF JUDICIAL REVIEW.

A Rate-Making Order of the Commission will not be Disturbed by the Courts Unless it is Plainly in Violation of Statutory or Constitutional Restraints.

This Court has frequently stated that the fixing of rates for the future is a legislative and not a judicial function; that the Court is not an appellate rate-making tribunal; that the Court does not undertake to substitute its judgment for the judgment of the Commission; that it will not seek to determine whether upon the record before the Commission some other result might have been reached; and that the Court yields to the Commission the unfettered right to fix rates within the limits of its discretion. The findings of the Commission will not be disturbed nor will its order be set aside unless it is clearly shown that the record affords no support for the Commission's conclusions. In brief, the sole judicial function in a proceeding of this character is to determine whether or not the Commission has exceeded its province or has violated some right secured to the appellants under the Constitution of

the United States.

Illinois Central Railroad Company v. Interstate Commerce Commission, 206 U. S. 441, 454, 51 L. ed. 1128, 27 Sup. Ct. 700 (1907);

Interstate Commerce Commission v. Illinois Central Railroad Company, 215 U. S. 452, 470, 54 L. ed. 280, 30 Sup. Ct. 155 (1910).

In the latter case the Court said (page 470):

"Power to make the order, and not the mere expediency or wisdom of having made it, is the question." (Emphasis supplied.)

In

Interstate Commerce Commission v. Union Pacific Railroad Company, supra,

is found a summary of the governing principles (pages 547-548):

"There has been no attempt to make an exhaustive statement of the principle involved, but in cases thus far decided, it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the

substance, and not the shadow, determines the validity of the exercise of the power. * * *

In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. 'The findings of the Commission are made by law prima facie true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience.' Illinois C. R. Co. v. Interstate Commerce Commission, 206 U. S. 441, 51 L. ed. 1128, 27 Sup. Ct. Rep. 700. Its conclusion, of course, is subject to review, but, when supported by evidence, is accepted as final; not that its decision, involving, as it does, so many and such vast public interests, can be supported by a mere scintilla of proof, but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order."

Procter & Gamble Company v. United States, 225 U. S. 282, 297, 298, 56 L. ed. 1091, 32 Sup. Ct. 761 (1912);

Seaboard Air Line Railway Company v. United States, 254 U. S. 57, 62, 65 L. ed. 129, 41 Sup. Ct. 24 (1920);

Virginian Railway Company v. United States, *supra*.

In the latter case the following language appears (pages 665-666):

"The finding of reasonableness, like that of undue prejudice, is a determination of a fact by a tribunal 'informed by experience.' * * * This court has no concern with the correctness of the Commission's reasoning, with the soundness of its conclusions, or

with the alleged inconsistency with findings made in other proceedings before it."

Chicago, Rock Island & Pacific Railway Company v. United States, 274 U. S. 29, 33, 54, 71 L. ed. 911, 47 Sup. Ct. 486 (1927).

The proposition is impregnably established that the rate-making orders of the Interstate Commerce Commission will not be disturbed by the courts unless they are plainly in violation of statutory or constitutional restraints.

The presumptions of regularity and validity which are accorded to the acts of the Commission in administering its functions are properly to be extended to its administration of the Hoch-Smith Resolution. As a tribunal "appointed by law and informed by experience," the validity of its processes will be assumed unless irregularity clearly appears. We can find no such evidence of irregularity in the report.

SUMMARY AND CONCLUSION.

The order of the Commission proceeds from the normal exercise of its rate-making functions. The rates assailed were found unreasonable under Section 1 of the Act upon an ample record, comprehending a comparative analysis of the rates on perishable products throughout the country, a survey of changes in the transcontinental rate structure since June 24, 1918, and a study of traffic, transportation and financial conditions. The findings are sus-

tained by the record and the order is supported by the findings.

The Commission has not required a rate reduction in obedience to the supposed desire of Congress as expressed in the Hoch-Smith Resolution. It has found previously existing rates unreasonable in accordance with accepted and approved standards, and has prescribed rates for future application within the limits of the zone of reasonableness.

The Commission has not held that the Hoch-Smith Resolution creates "a new and different standard of reasonableness"; instead it has expressly concluded that the Resolution "sets no new standard of lawfulness". The Commission has not held that it has authority to reduce an existing rate on agricultural products, notwithstanding that the existing rate is reasonable and otherwise lawful. It has held instead that all provisions of the Act, including Section 1, must be observed.

The Commission has neither misconstrued nor misapplied the Hoch-Smith Resolution. It is competent for the Commission to entertain a complaint against rates on agricultural products and, after finding them to be unreasonable upon sufficient evidence, to require a readjustment without awaiting the conclusion of the nation-wide investigation of the rate structure.

The rates prescribed by the Commission are not confiscatory. The cost studies upon which appellants rely are characterized by fallacies in their preparation which grossly exaggerate the cost of service. The appellants cannot demand the acceptance of a cost study predicated

upon costs prevailing in 1923 when it affirmatively appears that, at the time of hearing and decision, costs had materially declined. Moreover, a cost study which is based upon a limited test on the line of a single transcontinental carrier is inconclusive. The law does not require that all traffic shall contribute in equal proportion to indirect costs and to the carriers' profits. It is sufficient if freight rates upon a particular commodity shall make provision for all costs which can be directly assigned, a fair proportion of other costs together with a reasonable profit.

Rate-making orders of the Commission will not be disturbed unless it affirmatively appears that the Commission has exceeded statutory authority, has acted without substantial evidence or has disregarded Constitutional restraints.

Respectfully submitted,

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Dated at San Francisco, California,
February 11, 1929.

Receipt of a copy of the foregoing is hereby acknowledged on this.....day of February, 1929.

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FILE COPY

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No. [redacted] 7 4

In the Supreme Court of the United States

OCTOBER TERM, 1928

THE ANN ARBOR RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION, AND THE CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE, APPELLEES.

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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FEBRUARY, 1929.

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In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 273

THE ANN ARBOR RAILROAD COMPANY, THE ATCHISON, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company, et al., appellants

v.

THE UNITED STATES OF AMERICA, THE INTERSTATE Commerce Commission, and the California Growers' and Shippers' Protective League, appellees

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS

The specially-constituted District Court filed two memorandum opinions (R. 99, 105) which have not been reported.

The reports of the Interstate Commerce Commission appear as Docket No. 19130, *California Grow-*

ers' and Shippers' Protective League v. *Southern Pacific Co. et al.*, 129 I. C. C. 25 (R. 16–65), and 132 I. C. C. 582 (R. 65–69).

THE QUESTION

In the proceeding begun upon complaint of California producers and shippers of deciduous fruits alleging that the transportation rates on those commodities to destinations in the East were unjust and unreasonable and prejudicial, the Interstate Commerce Commission found after full hearing and upon a voluminous record that the rates were unreasonable and issued its order requiring the numerous common carriers engaged in that transportation to make small reductions in the rates and thereafter to establish and charge rates not in excess of those prescribed in the order.

The validity of the order is the ultimate question, a determination of which involves the following subordinate questions: (1) whether the order is supported by substantial evidence; (2) whether the Commission committed error of law in construing the joint resolution of Congress known as the Hoch-Smith Resolution; and (3) whether the rates prescribed are confiscatory.

STATUTES

The pertinent provisions of the Interstate Commerce Act (c. 104, 24 Stat. 379) as amended by Transportation Act, 1920 (c. 91, 41 Stat. 456, 475, 479, 484, 488, 491; U. S. C. Title 49, Sections 1, 3, 15, 15a):

SEC. 1. * * *

(5) All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: * * *.

SEC. 3. (1) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

SEC. 15. (1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of mes-

sages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

SEC. 15a. * * *

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided,* That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

* * * * *

(17) The provisions of this section shall not be construed as depriving shippers of their right to reparation in case of overcharges, unlawfully excessive or discriminatory rates, or rates excessive in their relation to other rates, but no shipper shall be entitled to recover upon the sole ground that any particular rate may reflect a proportion of excess income to be paid by the carrier to the Commission in the public interest under the provisions of this section.

The so-called Hoch-Smith Resolution (43 Stat. 801, Public Res. No. 46, S. J. Res. 107) approved January 30, 1925, is as follows:

CHAP. 120.—Joint Resolution Directing the Interstate Commerce Commission to take action relative to adjustments in the rate structure of common carriers subject to the Interstate Commerce Act, and the fixing of rates and charges.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared to be the true policy in rate making to be pursued by the Interstate Commerce Commission in adjusting freight rates, that the conditions which at any given time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move.

That the Interstate Commerce Commission is authorized and directed to make a thorough investigation of the rate structure of common carriers subject to the interstate commerce act, in order to determine to what extent and in what manner existing rates and charges may be unjust, unreasonable, unjustly discriminatory, or unduly preferential, thereby imposing undue burdens, or giving undue advantage as between the various localities and parts of the country, the various classes of traffic, and the various classes and kinds of commodities, and to make, in accordance with law, such changes,

adjustments, and redistribution of rates and charges as may be found necessary to correct any defects so found to exist. In making any such change, adjustment, or redistribution the commission shall give due regard, among other factors, to the general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years to a natural and proper development of the country as a whole, and to the maintenance of an adequate system of transportation. In the progress of such investigation the commission shall, from time to time, and as expeditiously as possible, make such decisions and orders as it may find to be necessary or appropriate upon the record then made in order to place the rates upon designated classes of traffic upon a just and reasonable basis with relation to other rates. Such investigation shall be conducted with due regard to other investigations or proceedings affecting rate adjustments which may be pending before the commission.

In view of the existing depression in agriculture, the commission is hereby directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service: *Provided,* That no investigation or proceed-

ing resulting from the adoption of this resolution shall be permitted to delay the decision of cases now pending before the commission involving rates on products of agriculture, and that such cases shall be decided in accordance with this resolution.

STATEMENT

The growing and shipping of deciduous fruits is one of the great basic industries of California. These fruits are grown throughout the State, from the Imperial Valley north to Redding. The soil and climate are peculiarly adapted to fruit and vegetable culture, and there are large areas that can be used for those purposes only. The growing of deciduous fruits is the most important single agricultural interest in the State, as shown by the values of its several farm products in 1925: Deciduous fruits $105,756,000, citrus fruits $85,243,000, vegetables $52,047,000, and main field crops $194,675,000. (R. 216, Ex. 16.)

Not more than 5 per cent of the production of fresh fruits in California is consumed there, and most of the product must of necessity move to the large consuming territory in the East.

The principal deciduous fruits shipped from California are grapes, peaches, pears, plums, apricots, cherries, and apples. Practically all of the cherries are shipped by express and most of the peaches and apricots are utilized by the canneries and dried-packing plants within the State.

The principal originating trunk-lines are the Southern Pacific, the Santa Fe, and the Western Pacific. The Los Angeles & Salt Lake, a part of the Union Pacific system, handles a relatively small amount of the traffic. The traffic moves over these lines and their connections chiefly to the large cities in the territory east of the Mississippi Rver, and north of the Ohio.

The fruit is shipped in refrigerator cars. An extra charge in addition to the line-haul rate is made for refrigeration, averaging about $85 a car. (Ex. 26.) No complaint was made against the assessment of an additional charge for refrigeration, nor against the amount of the refrigeration rate.

The complaint brought in issue the reasonableness of the deciduous fruit rates from California to the territory east of the Rocky Mountains. That territory has been divided by the carriers for the purpose of making transcontinental rates into 12 groups, designated by letters, viz, groups A, B, C, D, E, F, G, H, J, K, L, and M. The territorial limits of these groups are shown in the sketch appended to this brief. The most westerly group is "J," embracing the eastern portions of Colorado and New Mexico. With the exception of Group J, the rates applicable to the California deciduous fruit traffic are "blanketed" over all these groups, with the result that the same rate applies from California to any point east of Group J. To Group J the rate is slightly lower than the blanket rate. This enor-

mous blanket, undoubtedly the largest in the United States, was established voluntarily by the carriers, and they desire that it be continued, as do the shippers. All parties to the proceeding agreed that the blanket should not be broken up. The Commission did not disturb it.

When prices of fruit are high, growers are not particularly concerned about the level of their rates. This was true in 1920 when both rates and prices were at their peak. But when prices are low, transportation charges become an important item of expense in the production and marketing of fruit. That is the present condition of the industry. Since 1922, the industry has suffered because of a marked decline in prices received for the fruit without corresponding reductions in the cost of production, including transportation to markets in the East, and this recession in prices, and consequent economic depression, has continued practically unabated since that date.

Proceedings before the Commission

A. Proceedings in earlier case

Before discussing the proceeding in which the Commission issued the order here assailed it should be stated that three years previously the same rates were before Division 1 of the Commission upon a complaint filed August 31, 1923, by the same complainant invoking the same sections (1 and 3) of the Interstate Commerce Act, but upon a less extensive and exhaustive record. *California Grow-*

ers' and Shippers' Protective League v. *Southern Pacific Co. et al.*, 100 I. C. C. 79 (Docket 15137), decided June 25, 1925. While that case was pending decision, the Hoch-Smith Resolution was enacted January 30, 1925, carrying a provision that cases then pending before the Commission involving rates on agricultural products should be decided in accordance with the resolution. Division 1 said, at page 106 of its report:

> We have given consideration to the matters mentioned in the Resolution—

but, nevertheless, found that the rates were not unreasonable or unduly prejudicial, and dismissed the complaint, with the statement, however, at page 108:

> This finding is without prejudice to any conclusion which may be reached upon the later and more comprehensive record concerning the relation of railroad rates to agriculture which is expected to be developed in Docket No. 17000.

B. Proceedings in present case

The proceeding which resulted in the issuance of the order assailed by appellants, was instituted by complaint (R. 139) filed by the same complainant December 27, 1926, alleging that the rates of $1.62,[1] carload minimum weight 26,000 pounds, to Group J, and $1.73, with the same minimum, to the other

[1] All rates are herein stated in amounts per 100 pounds.

groups, on fresh deciduous fruits, other than apples, were unreasonable, in violation of section 1 of the Interstate Commerce Act, and unduly prejudicial, in violation of section 3 of that Act.

The complaint further alleged that those rates were "higher than the lowest possible lawful rates compatible with the adequate maintenance of transportation service, and upon an unjust and unreasonable basis with relation to other rates, in violation of the * * * Hoch-Smith Resolution."

It was further alleged that a just, reasonable, nonprejudicial and lawful rate for the transportation of deciduous fruits, in carloads, from points in the State of California to points in all of the aforesaid groups should not exceed $1.44, this being the rate that had been in effect immediately following the general increase of 25% effected June 25, 1918. The complaint expressed the willingness of the shippers to agree to an increase in the carload minimum weight on grapes, which constitute about 80 per cent of the deciduous fruit traffic, from 26,000 to 30,000 pounds.

The rate on apples was lower than on other deciduous fruits, being $1.41 to Group J, and $1.50 to the other groups. The complaint did not attack the reasonableness of these rates on apples. The term "deciduous fruits" will be used hereinafter to mean deciduous fruits, other than apples.

It was also alleged, and the evidence shows, that for many years prior to June 25, 1918, the rate maintained for the transportation of deciduous

fruits from California to the above-mentioned groups was $1.15 per 100 pounds; that this rate was increased on June 25, 1918, to $1.44 per 100 pounds; that the latter rate remained in effect until August 26, 1920, when it was increased to $1.80 to Group J, and to $1.92 to the other groups; that the last-named rates remained in effect until January 1, 1922, when they were reduced to $1.62 and $1.73, respectively, and that the latter rates had been maintained continuously since the last-mentioned date, without reduction, notwithstanding that the volume of the deciduous fruit traffic had enormously increased, and notwithstanding that subsequently to January 1, 1922, the defendants had substantially reduced the rates maintained and enforced by them for the transportation of a large number of commodities other than deciduous fruits, with the result that the California fruit growers and shippers were required to pay for the transportation of their traffic rates which were disproportionately high and which furnished an undue and unjust proportion of the revenues of the defendant carriers. (R. 142–145.)

The Railroad Commission of the State of California, the Railroad Commission of the State of Arkansas, the California Fruit Exchange, the California Farm Bureau Federation, the Arkansas Packing Corporation and the Ozark Fruit Growers Association intervened in the proceeding before the Commission in support of the complaint. The De-

partment of Agriculture and Markets of the State of New York, and the Departments of Agriculture of Pennsylvania and Michigan intervened in opposition to the complaint.

After full hearing, briefs were filed and the case was orally argued to the entire Commission. July 20, 1927, the Commission (not a division thereof) issued its report and order, *California Growers' & Shippers' Protective League* v. *Southern Pacific Co. et al,* 129 I. C. C. 25.

The evidence adduced at the hearing, as will be demonstrated hereinafter, was exhaustive in detail and included within its scope almost every conceivable type of information pertinent to a determination of the issues. The mass of facts contained in the record is stated in condensed form in the Commission's report (R. 16–65), and upon these facts the order (R. 6–7) is based.

The Commission did not sustain the allegation of undue prejudice, but found that the rate of $1.73 to Groups A to M, inclusive, except Group J, and the rate of $1.62 to points in Group J were unreasonable to the extent they exceeded $1.60 and $1.50, respectively, which rates the order required appellants to establish, with permission to increase the carload minimum weight on grapes from 26,000 to 30,000 pounds. The prescribed rates became effective February 10, 1928, after the court below denied the motion for an interlocutory injunction, and are now in force.

September 8, 1927, the defendant carriers petitioned the Commission for reconsideration upon the record as made. November 14, 1927, the Commission issued its report on further consideration, 132 I. C. C. 582, adhering to its former findings and affirming its order of July 20, 1927, except as modified by its order of October 14, 1927, which relieved the carriers of the necessity of establishing the prescribed rates over routes via north Pacific Coast gateways.

Proceedings in Court below

November 22, 1927, the appellants filed their petition to enjoin the Commission's order. December 20 and 21, 1927, oral argument was had before the specially-constituted District Court (Circuit Judge Rudkin of the Ninth Circuit, and District Judges St. Sure and Kerrigan), upon motion for a temporary stay and interlocutory injunction. January 18, 1928, the District Court rendered its memorandum opinion, denying the motion. (R. 99.) May 1, 1928, final hearing was held. May 3, 1928, the court rendered its memorandum opinion upon final hearing. (R. 105.) May 9, 1928, final decree was entered, dismissing the bill for want of equity. (R. 107.)

Prior proceedings in this Court

May 11, 1928, appellants filed a "Motion for Stay or Suspension of Operation of Order of Interstate Commerce Commission pending Appeal." May 21,

1928, this court heard oral argument upon the motion and on May 28, 1928, denied it.

SUMMARY OF ARGUMENT

I. The Commission having found that the assailed rates were unreasonable, upon a comprehensive record containing exhaustive evidence concerning almost every conceivable factor of rate making, there is no foundation for appellants' assertion that the order has reduced a reasonable rate. The finding in this case that the rates were unreasonable is fully supported by substantial evidence:

1. Deciduous fruit rates, like all other rates, were subjected to the several nation-wide horizontal increases, and while rates on the great body of transcontinental traffic have since been reduced to about 25 per cent above their pre-war level, the deciduous fruit rates remained 50.4 per cent above that level.

2. The deciduous fruit rates were higher than transcontinental rates generally on other fruits and vegetables from California.

3. Greater revenue was produced by the assailed rates than by rates on other comparable traffic for similar hauls in other sections of the country.

4. Deciduous fruit moves in tremendous volume from California, the yearly tonnage now approximating five times the pre-war tonnage.

5. The market prices of deciduous fruits were deflated to the extent that they were less than 57 per cent of their "peak" in 1920, the 1926 prices

being only 3.5 per cent higher than those of 1917, while the freight rates had been reduced only 10 per cent below their peak, and were 50.4 per cent above their 1917 level.

II. The Hoch-Smith Resolution was correctly construed by the Commission as setting no standard of lawfulness of rates, new or different from that already provided by the Interstate Commerce Act. It properly interpreted the Resolution to mean that, to the extent that there are flexible limits to the Commission's discretion in determining the lawfulness of rates, it should require, on products of agriculture affected by depression, the establishment of the lowest rates falling within those flexible limits, compatible with the maintenance of adequate transportation service. It is an established principle of rate-making that the burden of transportation may reasonably be adjusted with some regard to the value of the service, and the higher grade, more valuable commodities be required to yield a greater margin of profit than those of lower grade and less value. Thus, the Commission did not construe the Resolution as authorizing it to reduce a rate which it was without authority under the Act to reduce. The correctness of this interpretation is fully sustained by the legislative history of the Resolution.

1. Appellants' contention that the Commission's interpretation of the Resolution impliedly repeals Section 15a of the Act must fall, because (1) the Commission did not reduce a "reasonable" rate,

but a rate which it found, upon substantial evidence, to be unreasonable, (2) there is no proof that the reduction required by the order will substantially reduce appellants' revenues; and (3) reducing an unreasonable rate, with or without a direction from Congress, does not to any extent repeal Section 15a, for that section itself expressly reserves to the Commission the power to reduce unreasonable rates.

2. The effect upon appellants' revenues of the reduction required by the order will be inconsequential.

3. Appellants' assertion that the Commission construed the Resolution as authorizing it to fix a rate yielding revenue only slightly above operating expenses is based on misunderstanding of the language used by the Commission.

4. That the Commission exercised its statutory power only to regulate rates and not the fruit industry is shown by the report itself. In so far as "commercial conditions" involve value of the commodity and value of the transportation service to the shipper, they properly may be considered with numerous other factors in determining the reasonableness of rates.

III. The evidence shows that the prescribed rates are not confiscatory, and appellants have not demonstrated the contrary. They admit their cost study is inaccurate and defective in certain respects. Moreover, it is based on only one of the several varieties of fruit, covers shipments moving in 1923, without showing that costs for 1926 were the same,

whereas, operating costs of the Santa Fe—the only carrier included in the cost study—are shown to have been lower in 1926 than in 1923. The study does not purport to show that costs on even one of the other 449 carriers were the same as those of the Santa Fe.

ARGUMENT

I

THE COMMISSION FOUND UPON THE RECORD BEFORE IT THAT THE RATES WERE UNREASONABLE; THAT FINDING IS SUPPORTED BY SUBSTANTIAL EVIDENCE

The crux of appellants' argument is predicated upon the assumption that the rates reduced by the Commission were reasonable rates. Having thus assumed its major premise, the argument proceeds upon the theory that the Commission, misinterpreting the Hoch-Smith Resolution, erroneously applied it by reducing these reasonable rates without substantial evidence to support its action. We are thus confronted at the outset with the question whether the Commission's finding of unreasonableness is supported by substantial evidence. We will refer briefly to the evidence, therefore, before entering upon a discussion of the Resolution, to demonstrate that it was of the most substantial character and amply supported the Commission's finding that the challenged rates were unreasonable.

1. *Rates on California deciduous fruits remained practically at their war-time peak while the rates on the great body of transcontinental traffic were reduced.*—The rates on deciduous

fruits, like all other rates in the United States, were subjected to drastic increases as a result of war-time conditions. The first nation-wide increase was made June 25, 1918, while the railroads were under Federal control. This was a flat, horizontal increase in all rates generally of 25%. Further nation-wide increases were made shortly after the railroads were returned to private control, and were authorized by the Commission in *Increased Rates, 1920,* 58 I. C. C. 220, in pursuance of the provisions of the Transportation Act 1920 which added section 15a to the Interstate Commerce Act. These increases were flat, horizontal increases of 40% in the eastern district, 25% in the southern district, 35% in the western district, 25% in the mountain-Pacific district, and 33⅓% in the rates applying interterritorially, that is, from one district to another.

The pre-war rate on deciduous fruit from California to the East was $1.15. (R. 229–230, Ex. 28.) This rate, established voluntarily by the carriers in 1911, remained in effect until June 25, 1918, when, as a result of the 25% increase, it became $1.44. On August 26, 1920, it was subjected to the horizontal increase of 33⅓% and became $1.92 [2]—its "war-time peak."

July 1, 1922, a nation-wide reduction of 10% in practically all rates was made as a result of the ac-

[2] This was the rate to all groups other than "J," which is here neglected because of the small volume of traffic to that group.

tion of the Commission in *Reduced Rates 1922*, 68 I. C. C. 676. The California deciduous fruit rate was accordingly reduced from $1.92 to $1.73. This reduced rate was first established temporarily by the voluntary action of the carriers on January 1, 1922, and after July 1, 1922, was continued without time limit.

No further reduction was granted by the carriers in this rate and it was still in force at the time the complaint was filed with the Commission on December 27, 1926. So that it was then but 10% less than the war-time peak and was 50.4% higher than the pre-war rate of $1.15.

Meanwhile the rates on the great body of transcontinental traffic had been reduced from the war-time peak. Beginning about January 1, 1922, there had taken place a gradual downward readjustment of the transcontinental rate structure. The rates on deciduous fruit did not share in this downward readjustment and as a result deciduous fruit rates were upon a higher level above the pre-war basis at the time the complaint was filed than were the rates upon the great body of transcontinental traffic. Proof of this was submitted by showing that upon 75 commodities moving eastbound and upon 65 commodities moving westbound, admitted by the carriers to represent a fair cross-section of the transcontinental traffic, the rates averaged 29% and 22% above the pre-war level. Import and export rates from and to Pacific coast ports exceeded the pre-war basis on

an average of 41% and 18%, respectively. The rates on lumber from the Pacific coast moving transcontinentally exceeded the pre-war basis but 23%, and those on petroleum and its products but 25%. Fresh citrus fruits were only 35% higher. In *Express Rates 1922*, 83 I. C. C. 606, and 89 I. C. C. 297, the Commission found the carload express rates then in effect on fruits, berries, vegetables, butter and eggs to be unreasonable and ordered them reduced. As a result of that order, the carload express rate on fruits and vegetables from the Pacific coast to New York and other points east of Chicago was only 27.6% above the pre-war level. If the deciduous fruit rates here involved had been reduced to reflect the same percentage over the pre-war basis, the $1.73 rate would have become $1.465. The Commission prescribed $1.60. To recapitulate, these rate levels are set out in tabular form:

Percentage above pre-war basis[1]

Deciduous fruits	50.4
Fair cross section of transcontinental traffic:	
Eastbound (75 commodities)	29
Westbound (65 commodities)	22
Import rates from Pacific coast ports	41
Export rates to Pacific coast ports	18
Lumber	23
Petroleum and its products	25
Fresh citrus fruits	35
Express rates on fruits and vegetables	27.6

Thus, while all rates went up together and all reached their war-time peak, practically all have

[1] Meaning the basis in effect immediately prior to the general 25% increase of June 25, 1918.

since come down materially except the deciduous fruit rates, with the result that a disproportionate share of the transcontinental freight-rate burden was cast upon deciduous fruits. Complainants sought the same benefits for deciduous fruits that the carriers, in the exercise of their rate-making discretion, had granted to other transcontinental traffic quite generally.

2. *The rates on deciduous fruits were higher than the rates generally prevailing on other fruits and vegetables moving transcontinentally from California.*—A comparison of the deciduous-fruit rates in issue with the rates on the other principal fruits and vegetables that move from California to the East showed that generally speaking the rates on the deciduous fruits were the highest. For instance, the $1.73 rate on deciduous fruits to the eastern groups was 18 cents per 100 pounds higher than the rate on oranges to the same destination groups and 23 cents per 100 pounds higher than the rates on lemons and apples to the same groups. (Ex. 29.)

The deciduous-fruit rates in issue were also generally higher on the average than the transcontinental rates on melons, cantaloupes and vegetables. The differences are shown in the following tabulation:

	From California points to groups					
	A	B	C	D-E	F-G-H	J
Melons Cantaloupes Vegetables (in package) Deciduous fruits	175 173	173 173	165 173	146 173	139 173	134 162

There was an even greater disparity as between the rates on deciduous fruits and those on vegetables in bags and fresh cabbage in crates. The deciduous fruit rates exceeded these latter rates in the following amounts:

	Cents
To Groups A, K, L, and M	22
To Group B	37.5
To Group C	45
To Groups D and E	63
To Groups F, G, and H	63
To Group J	56

There were also comparisons as between deciduous fruits and other fruits and vegetables in respect of the revenue on the per car, per car-mile, per net ton-mile, and per gross ton-mile bases, calculated upon the average weighted haul. These comparisons are set out in tabular form in the Commission's report (R. 31) and need not be reproduced here. As stated in the report, the earnings per car on deciduous fruits were higher than on lemons and were materially higher than on fresh vegetables and cantaloupes. They were lower than on apples and citrus fruits, but considering the length of the haul, the net ton-mile earnings on deciduous fruits were relatively higher than on all the other commodities,

while the car-mile and gross ton-mile earnings were higher in some instances and lower in others.

3. *The rates on deciduous fruits from California yielded greater revenue than the rates on other comparative traffic for similar hauls in other sections of the United States.*—Comparisons of the deciduous fruit rates in issue with the rate on bananas and cocoanuts from New Orleans and other Gulf ports to Portland, Oreg., Spokane and Seattle, Wash., Vancouver, B. C., and Los Angeles and San Francisco, Calif., an average distance of 2,964.8 miles, which is about the same as the weighted average haul of California's deciduous fruits in 1926 (2,970 miles), showed that while the rate on the latter commodities was somewhat higher, the per car revenue was substantially lower, being $360.02 per car as against $489.42 per car on deciduous fruits. The average number of cars in a special train of bananas is about 41; in a typical train of deciduous fruits 55. It was shown that the gross revenue yielded by a typical trainload of bananas from New Orleans to Pacific coast destinations was $15,000, whereas that on a typical trainload of California deciduous fruits yielded an approximate gross revenue of $29,000.

A summary of 171 rates on bananas from New Orleans and other Gulf ports to destinations in eastern trunk-line, central freight association, western trunk-line and transcontinental territories, applying for an average distance of 2,525 miles,

showed that the average earnings per car and per gross ton-mile were lower than the average under the deciduous fruit rates assailed.

Similar comparisons showed that the rates on pineapples from Gulf ports to Pacific coast points, an average distance of 2,938 miles, yielded average earnings, after deducting terminal expenses absorbed by the carriers, of $461.40 per car, as against $489.42 yielded by the deciduous fruit rates in issue.

4. *The deciduous-fruit traffic moves in tremendous volume.*—As stated in the Commission's report, "Volume of movement is an important factor in testing the reasonableness of a rate." In 1926, the movement to groups A to M except J amounted to 1,044,969 tons. This vast tonnage moved in 74,456 cars made up as follows: Grapes, 58,334; pears, 9,523; plums, 4,741; peaches, 1,093; and miscellaneous, 765. The movement to group J amounted in 1926 to 8,768 tons, or 627 cars.

In 1916 the total carload shipments of deciduous fruits from California to interstate destinations amounted to 17,891 cars. In 1925 the shipments approximated nearly five times that number, 86,795 cars. During the last three years covered by the record, 1925–1927, the average was 85,144 cars. (R. 223,104.) The movement of deciduous fruits begins in June and continues in substantial quantities until December. From June 15 to November 20, 1926, there were only nine days upon which less than 100 cars of deciduous fruit originated on the

Southern Pacific and the Western Pacific for eastbound movement. While in many instances, reconsignments necessitate taking some of the cars out of the train enroute, nevertheless many of the trains go through solid. This is a factor which has a decided bearing upon the reasonableness of the rates, for, as stated by the Commission in the *Cattle Raisers Case,* 11 I. C. C. 296, 335:

> No one thing so contributes to reducing the cost of movement as the ability to handle traffic long distances in solid trains.

5. *Fruit prices have been deflated while freight rates on fruit have remained inflated.*—While deciduous fruit prices were generally inflated during and following the period of the World War, freight rates likewise reached their peak at about the same time. Freight rates on deciduous fruits did not change in the face of changed conditions in the deciduous-fruit industry. The challenged rates on deciduous fruits were but 10% less than the wartime peak, while the price levels of all deciduous fruits had been deflated to a point where the weighted average prices in 1926 were less than 57% of the peak prices received in 1920. For example, the average price in 1917 of apricots, grapes, peaches, pears, and plums was $5.43 per 100 pounds; in 1920, it was $9.97 per 100 pounds; 1926, $5.62 per 100 pounds. *Compared with 1917 prices, those in 1926 were but 3.5% higher, while the freight rates were still 50.4% above the 1917 level.* (Exs. 24 and 25; R. 226, 228.)

In 1920, transportation and refrigeration charges constituted 18.8 per cent of the price received for the fruits in eastern markets; in 1925 this percentage had grown to 35. (Exs. 26 and 27, R. 228.)

It is impossible without unduly extending this brief to refer in detail to all the evidence submitted to the Commission. The report of the Commission, 129 I. C. C. 25–62 (R. 16–65), indicates the nature and extent of the evidence. Appellants make no contention whatever that any of the facts stated in the report are without support of evidence. Reference to it will quickly show that the evidence was quite comprehensive. To summarize, the evidence covered, among other things, the following matters: The volume of traffic; the routes over which the traffic is handled; the manner of assembling the shipments; the length of the hauls and the weighted average haul; the season of movement; the various rate groups; the economic conditions in the California fruit industry and of agriculture generally; the prices realized from the sale of the fruit; comparisons of the deciduous fruit rates in issue with the rates upon other perishable traffic in effect throughout the United States; comparison of the level of deciduous fruit rates with the level of the rates upon other fruits and vegetables that moved from California to eastern territories; comparison of the general level of the deciduous fruit rates with the level of the transcontinental rates generally; the earnings per car-mile, per net ton-mile,

and per gross ton-mile; the extent of the car loading and the average load; traffic and transportation conditions surrounding the movement of deciduous fruits and other commodities; the weather conditions during the time when the deciduous fruit movement occurs and other circumstances and conditions affecting the economy or efficiency of operation; the operating difficulties; the time schedules maintained for the transportation of the fruit; the type of equipment used; the empty return movement; the extent of the loss and damage claim payments; the nature of the terminal service accorded to the traffic; diversions and reconsignments; the question of the freedom of the movement; the effect of the proposed reduction upon the industry and upon the carriers; the operating returns of the carriers handling the traffic, their income and financial condition in general; the cost of the transportation service, and many other matters.

A very full and complete record was developed which disclosed with unusual thoroughness the facts and circumstances which a rate-making body would need to consider in fixing rates upon the traffic, including virtually all conceivable elements of rate making.

It is believed that the evidence establishing the five facts referred to above alone is sufficient to support the Commission's order. That the evidence did establish these facts is not denied. That led to the conclusion that the rates attacked were

unreasonable, and, when considered in connection with all the other evidence, seem abundantly to support the Commission's finding of unreasonableness, and to fully support its order prescribing but slightly reduced rates which, in the opinion of the Commission, are reasonable rates.

II

THE COMMISSION CORRECTLY CONSTRUED THE HOCH-SMITH RESOLUTION

The Hoch-Smith Resolution is a joint resolution passed by the Senate and the House, and approved by the President January 30, 1925. It is a consolidation of two resolutions, H. J. Res. 141, introduced by Congressman Homer Hoch, of Kansas (member of the Committee on Interstate and Foreign Commerce), and S. J. Res. 107, introduced by Senator Ellison D. Smith, of South Carolina (then Chairman of the Committee on Interstate Commerce). It is quoted in full at pp. 6–8, *ante*, and is hereinafter called the Resolution.

Having been passed by both houses of Congress and signed by the President, the Resolution has the force of statute law, *Levey* v. *Stockslager*, 129 U. S. 470; *Fourteen Diamond Rings* v. *United States*, 183 U. S. 176, 184; *United States* v. *Chavez*, 228 U. S. 525; *Talbott* v. *United States*, 208 Fed. 144; *Wells* v. *United States*, 257 Fed. 605.

The Resolution is in three paragraphs, the first of which declares it to be the true policy in rate-making to be pursued by the Commission in adjust-

ing freight rates, that the conditions which at any given time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move.

The second paragraph directs the Commission to make a nation-wide investigation of all rates and to correct defects. This the Commission is doing. *Rate Structure Investigation,* Docket No. 17000. (Its order instituting this investigation is in the record, pp. 514-522.)

The third paragraph, which is more particularly involved here, provides that,

> In view of the existing depression in agriculture, the commission is hereby directed to effect with the least practicable delay, such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service: *Provided,* That no investigation or proceeding resulting from the adoption of this resolution shall be permitted to delay the decision of cases now pending before the commission involving rates on products of agriculture, and that such cases shall be decided in accordance with this resolution.

The Commission's interpretation of this third paragraph, as explained in its report (R. 26-28), is in substance as follows:

The Resolution sets no new standard of lawfulness of rates, but provides, in effect, that to the extent that there are flexible limits to the Commission's discretion, the Commission shall require the maintenance of the lowest rates on products of agriculture falling within those flexible limits. Rates that may lawfully be required must in principle be high enough to cover all of the cost that may fairly be allocated to the service plus at least some margin of profit. But it has always been recognized that the burden of transportation may reasonably be adjusted with some regard to the value of the service; in other words, that the higher grade, more valuable commodities may be required to pay a greater margin of profit than those that are of lower grade and less value. The substance of the provision of the Resolution is that agricultural products affected by depression shall in this respect be included in the class of most favored commodities, to such extent as may be "compatible with the maintenance of adequate transportation service." Other sections of the Interstate Commerce Act must be borne in mind in determining the lowest lawful rates in a particular situation. The Resolution is in effect a direction to the Commission to give agricultural commodities affected by depression the lowest rates that it is possible to give without running counter to the provisions of the Interstate Commerce Act and the carrier's rights under the Constitution. Section 1 of the Act requires that all rates shall be just and reasonable. What is a reasonable rate?

It may be said to be somewhere between the minimum charge that can be made for the service and permit the carrier to live, and the maximum charge that can be borne by the shipper. The legislature or its administrative agent may not make rates so as to confiscate the carrier's property. The carrier on the other hand may not make rates which are unjust to those who by economical necessity are compelled to employ its service. Here, then, is the minimum of legislative power and the maximum of the carrier's power. Between these limits lies a zone, indefinite and varying, a "zone of reasonableness," within which any rate is just and reasonable to the carrier, as well as just, fair, and reasonable to the shipper that utilizes the carrier's services. The Commission concludes that "the lowest possible lawful rates" which it may prescribe under the Resolution on any given agricultural traffic as to which depression has been shown must be somewhere within the zone of reasonableness permitted by the flexible limits of discretion reposed in the Commission, and that such rates must be put as near the lowest limit or level of that zone as is compatible with the maintenance of adequate transportation service.

The Resolution itself, by the use of the words "*lowest* possible lawful rates," recognizes that there may be more than one lawful rate, that there is a "zone of reasonableness," and that there are flexible limits to the Commission's discretion in the prescription of rates for future application.

Room for the exercise of these flexible limits of discretion grows out of the fact that there is no way by which it may be determined with mathematical accuracy just how much a particular rate should be. As expressed in *Int. Com. Comm.* v. *Union Pacific R. R.*, 222 U. S. 541, 550, "there is no possibility of solving the question as though it were a mathematical problem to which there could only be one correct answer."

The Act requires that all rates shall be just and reasonable and reposes authority in the Commission to determine and prescribe rates which meet that standard. (Sec. 1 (5); Sec. 15 (1).) But since it is impossible to determine with accuracy what rates are just and reasonable, that question is left to the judgment and discretion of the Commission. Its judgment is to be formed from the evidence; and its conclusion is accepted as final when its action is not arbitrary or otherwise unlawful. To quote again from the *Union Pacific* case:

> With that sort of evidence before them, rate experts of acknowledged ability and fairness, and each acting independently of the other, may not have reached identically the same conclusion. We do not know whether the results would have been approximately the same. [Here the Court uses the language above quoted.] Still there was in this mass of facts that out of which experts could have named a rate. The law makes the Commission's finding on such facts conclusive.

In other cases this Court has recognized the zone of reasonableness and the wide range of discretion in the exercise of the power to prescribe reasonable rates. *Illinois Central R. R.* v. *United States,* 263 U. S. 515, 524; *American Express Co.* v. *Caldwell,* 244 U. S. 617, 624; *Northern Pacific Ry. Co.* v. *North Dakota,* 236 U. S. 585, 598–599; *Norfolk & Western Ry.* v. *West Virginia,* 236 U. S. 605, 608.

The Resolution calls for the exercise of the Commission's discretion in a particular manner; that is that the Commission shall make rates upon products of agriculture affected by depression at the lowest rates which are lawfully possible, subject to the reservation that the rate shall not be fixed so as to interfere with the maintenance of an adequate transportation service.

That the Commission has properly construed the Resolution is shown by the committee reports and by statements of the authors of the bills made during the debate, reference to which is permissible to clear up any ambiguity that may exist.

The report of the Committee on Interstate Commerce (Senate Rep. 313, 65 Cong. Rec., Pt. 5, p. 5120) stated the purpose of the Resolution to be of declaring the policy of the Congress as to freight rates on agricultural products and directing the Interstate Commerce Commission to carry this policy into effect. The report stated:

> Congress having delegated to the Interstate Commerce Commission the power to make rates, it was thought unwise to attempt

to dictate any specific rate, but to direct the commission that in the exercise of its rate-making power that the products of agriculture should carry the lowest rate in the rate structure. This is because the products of agriculture are the prime essentials in the economic structure of organized society. These products are produced under circumstances that do not permit the producer to pass the charges incident to their marketing to the consumer.

The agriculturist pays the freight upon what he buys and sells. It seems, therefore, but just that provision should be made to make his burden as light as possible, especially upon the things he produces.

The report of the Committee on Interstate and Foreign Commerce (House Report 735, 65 Cong. Rec., Pt. 8, p. 8497, May 13, 1924), stated that the Resolution "is based upon the proposition that the present freight structure is out of adjustment, and that certain commodities, particularly agricultural products, are in general, bearing an unfair proportion of the freight burden."

The House Committee was convinced that the flat, horizontal increases in freight rates which had taken place in recent years had disrupted rate relationships, brought about maladjustments and had placed a disproportionate burden upon the products of agriculture, as shown by the following three paragraphs quoted from the report:

The present freight structure, which has grown up piecemeal and is a result of all

sorts of local considerations, has long been out of adjustment. This maladjustment has been greatly increased by the flat horizontal percentage increases in freight rates which have been made in recent years. These flat, horizontal increases were not scientific. The method used was grounded on expediency and the need for prompt action.

During Federal control, on June 25, 1918, there was a flat increase of 25 per cent throughout the whole country. On August 26, 1920, there were further flat, horizontal increases throughout the whole country as follows: 40 per cent in the eastern district, 35 per cent in the western district and 25 per cent in the southern and mountain-pacific districts, with an increase of 33⅓ per cent on interterritorial rates; that is, from one of these groups to another. Since these flat increases went into effect there have been some decreases and various adjustments, and in several districts of the country the commission has been carrying on rather comprehensive surveys of the freight structure.

This improper distribution of the freight burden has borne particularly heavily on the products of the farm owing to the price deflation in those products. The present structure does not give proper weight to the question of what the traffic can fairly bear. The cost of the service to the carriers is not the only factor that must be considered but the value of the service to the shipper as well.

This report quoted from the recommendations of the Joint Congressional Commission on Agricul-

tural Inquiry, which had made an extensive inquiry into the whole problem, as follows:

> The transportation rates on many commodities, more especially the products of agriculture, bear a disproportionate relation to the prices of such commodities; there should be immediate reductions in transportation rates applied to farm products and other basic commodities; greater consideration should be given in the future by public rate-making authorities and by the railroads in making of transportation rates, to the relative value of commodities and existing and prospective economic conditions. The pyramided per cent advances in rates which have been authorized by the Interstate Commerce Commission or made by the United States Railroad Administration caused the dislocation of long-standing relationships between rates upon agricultural and industrial products, between competitive enterprises and competitive sections of the country.

During the course of the debate in the House, Representative Hoch, who submitted the Committee Report, after having called attention to the various horizontal increases in rates which had taken place during the period from 1918 to 1920, stated:

> A moment's thought will show to anyone that flat, horizontal increases of that sort in the freight structure tend to throw the relative rates into dislocation. To make a specific illustration—and I have not time, of course, to give figures—the freight upon a

bushel of wheat is a very large item, but the freight upon a highly fabricated article, as, for instance, a pair of shoes, is comparatively small.

When you increase by 15 to 25 or 35 or 40 per cent the whole freight structure, you see that you do something to the bulky commodities which you do not, in like effect at all, do to other articles. The effect of every one of these flat horizontal increases has been to throw into freight-rate structure of the country new disparities and to greatly accentuate the maladjustments which existed prior to that time. It is conceded that these flat horizontal increases were not scientific. If justified at all the method must be justified on the grounds of expediency and the necessity for quick action. * * *

It is generally agreed, I think, among students of the subject that the rates upon basic commodities should be adjusted and more favorable rates given. * * *

* * * It does not direct particular rates upon farm products, although I am firmly convinced that a study will show that those rates in many cases ought to be reduced, but it does call the attention of the Interstate Commerce Commission by the Congress, which has the right to speak to the commission, which is an agency of the Congress, to the great agricultural depression existing in the country and it says to the Interstate Commerce Commission, "We direct that you shall with the least practicable

> delay make such changes in the freight rates upon farm products, including livestock, as will as far as possible correct any injustices that may be found to exist and promote the freedom of movement of these products." (Cong. Rec., Vol. 65, Pt. 11, page 11019.)[2]

The legislative history of the Resolution shows that the following considerations lead to its passage:

1. Agriculture is the basic industry of the country.

2. The present freight rate structure, which has grown up piecemeal and is the result largely of local considerations, has long been out of adjustment.

3. This maladjustment has been greatly accentuated by the flat horizontal percentage increases in freight rates which have been made in recent years. These increases were not scientific; the method used was grounded on expediency and the need for prompt action.

4. These flat, horizontal percentage increases placed a disproportionate burden upon the products of agriculture as compared with less bulky,

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[2] The following references, aside from the two Committee reports above mentioned, cover the complete legislative history of the Resolution: House Report 867, 68th Cong., 1st Sess., May 27, 1924; House Report 1023, 68th Cong., 1st Sess., June 7, 1924; printed report of "Hearings before the Committee on Interstate and Foreign Commerce, * * * 68th Cong., 1st Sess., on H. J. Res. 141," Apr. 3, 4, 5, and 9, 1924; Vol. 65, Cong. Rec., pp. 346, 1071, 4780, 5120, 8336, 8337, 8456, 8497, 9675, 11018–11026, 11124, 11220, 11246; Vol. 66 Cong. Rec., p. 2501.

higher grade, more valuable commodities, and this burden has become heavier as a result of the post-war price deflation in the products of the farm.

Appellants argue that the Commission erroneously interpreted the Resolution as requiring it "to reduce an existing rate on agricultural products, notwithstanding that the existing rate was reasonable, and otherwise lawful," and that therefore the order is invalid.

The argument, on its face, is obviously unsound, because it takes for granted that the rate challenged by the complaint as unreasonable was reasonable, whereas the reasonableness of the rate was the question at issue in the proceedings before the Commission, and the Commission, after a full hearing, and upon a full record, which disclosed all the relevant transportation facts, found the rate to be unreasonable. Inasmuch as the law sets no standard of reasonableness, and the Commission has exclusive initial jurisdiction to determine the reasonableness of interstate rates, *Texas & Pac. Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, *Great Northern Ry. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285, we are unable to understand how it can be consistently said that any rate is reasonable in the absence of a finding to that effect by the Commission.

Appellants' argument would have force only if the Commission had found the assailed rates to be *reasonable* and then, despite that finding, ordered them reduced. But the Commission found, upon the evidence, that the assailed rates were unreason-

able. There was allegation and proof, as well as the finding, that they were unreasonable.

But it is contended that "the finding that the old rate was 'unreasonable' was not a finding that the old rate was unreasonable, measured by the standards of the Interstate Commerce Act, but only that it was in excess of the 'lowest possible lawful rate' enjoined by the Resolution." (Appellants' brief, p. 41.)

The answer to this contention is that the Commission has consistently construed the Resolution as setting up no new standard of reasonableness or lawfulness but that in applying the Resolution the standard of reasonableness to be followed is that provided by section 1 of the Interstate Commerce Act which requires that all rates shall be just and reasonable. In *Grain and Grain Products,* 122 I. C. C. 235, 264, the Commission, referring to the Resolution, said:

> *It sets no new standard of lawfulness,* but provides, in effect, that to the extent that there are flexible limits to our discretion, we shall prescribe the maintenance of the lowest rates falling within those flexible limits. (*Italics ours.*)

In *American Livestock Asso.* v. *A. T. & S. F.,* 122 I. C. C. 609, 617, the Commission repeated that assertion, in almost identical language:

> *It set no new standard of lawfulness,* but said, in effect, that to the extent that there are flexible limits to our discretion we should

> fix the lowest rates falling within those limits. (*Italics ours.*)

In its report in the case at bar the Commission cited the two cases just referred to and adhered to that construction of the Resolution, making it clear that in cases in which the Resolution is invoked the standard of reasonableness is that provided by the Interstate Commerce Act. This is manifested by its language on page 33 of the report, reading:

> The resolution is in effect a direction to us to give agricultural commodities affected by depression the lowest rates that it is possible to give without running counter to the provisions of the Interstate Commerce Act and the carriers' rights under the constitution. Section 1 of the Act requires that all rates shall be just and reasonable.

It follows that the finding of the Commission, that the challenged rates were "unreasonable," was a finding of unreasonableness under section 1 of the Interstate Commerce Act and not a finding of unreasonableness under a new or different standard. There is no basis for the assertion that the Commission applied any different standard of reasonableness than the lawful one.

Appellants point to the following quoted passage from the Commission's report as showing that the Commission interpreted the Resolution as authorizing it to reduce a rate, though reasonable, if the rate were not the lowest possible lawful rate:

> The primary issue to be determined, therefore, is whether the $1.73 rate assailed approaches the lowest limit or level of the zone of reasonableness permitted by the flexible limit of discretion reposed in us.

It seems to us this is merely another way of saying that the question at issue was whether the rate assailed was unreasonable; that is, whether it was too high. That this was the question for determination is indicated by the following quoted passage from the report which immediately follows the language quoted above:

> * * * The present $1.73 rate is the outgrowth of the pre-war rate of $1.15, the history of which has been shown. It is now 50.4 per cent higher than the pre-war rate, and it is also considerably higher relatively to the pre-war level than the great body of transcontinental rates. During the period the $1.15 rate was in effect the average annual movement of deciduous fruits transcontinentally was about 16,380 cars, as compared with 86,795 cars in 1925, and 78,803 in 1926. Concurrently with the increase in the eastbound loaded movement there has resulted a greater empty westbound movement. Excluding abnormal years the average load has changed but little in the past 10 years, except on grapes. As to these, complainant now tenders an increase in the present minimum from 26,000 to 30,000 pounds. The other deciduous fruits will not load much above the existing 26,000-pound minimum, and it would

be impracticable to increase the minimum as to them. (R. 57.)

And reference to the report as a whole will show that the question which the Commission considered was whether the rate assailed was too high, i. e., unreasonable. In addition to the passages above quoted, attention is called to the following:

> Rate of $1.73 per 100 pounds on fresh deciduous fruits, other than apples, in carloads, from California to destinations in transcontinental Groups A to M, inclusive (except Group J), found unreasonable to the extent that it exceeds $1.60. Rate of $1.62 on the same commodities from California to Group J points found unreasonable to the extent that it exceeds $1.50. (Syllabus.) R. 16.)
>
> * * * the propriety of $1.73 rate must be considered from the standpoint of its reasonableness for the average weighted haul. (R. 29.)
>
> In connection with this showing of relative rate levels, complainant refers to our decision in *Rates on Grain and Grain Products and Hay,* 64 I. C. C. 85, where we held that grain, grain products, and hay were bearing "a share of transportation charges which is disproportionate." It deduces from this decision the principle that when rates on a particular body of traffic are found to be disproportionately high in comparison with rates on other traffic, it is within our power to condemn such rates as violative of the inter-

state commerce act, and contends that deciduous fruits now bear a disproportionate share of the transcontinental freight-rate burden. They seek the same benefits for deciduous fruits that the carriers, in the exercise of their rate-making discretion, have granted to other transcontinental traffic quite generally. (R. 37.)

Complainant also relies upon the traffic and transportation conditions surrounding the movement of deciduous fruits, and urges that the rates and earnings heretofore shown must be considered in connection with these conditions. There has been an enormous increase in the tonnage of these fruits, and volume of movement is an important factor in testing the reasonableness of a rate. (R. 38.)

We are of the opinion and find upon a consideration of the whole record that the rate of $1.73 as applied to the transcontinental shipment of deciduous fruits from California to Groups A to M inclusive, except Group J, is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.60; and that the rate of $1.62 currently applicable to Group J points is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.50 * * * (R. 59.)

That the Commission has interpreted the Resolution as authorizing it to reduce rates only when, upon the evidence, it is shown that the rates are unreasonable, is demonstrated by its action in the

case at bar, and also in the earlier case brought by the California shippers, 100 I. C. C. 79, seeking a reduction in the same rates, in which case the Commission, Division 1, found, upon the evidence, that the rates were not unreasonable, and dismissed the complaint, despite the fact that the Resolution was in effect at the time of its decision and despite the fact that, as stated in the report, the Resolution provides that cases pending before the Commission at the time of its passage involving rates on products of agriculture should be decided in accordance therewith. (R. 315.) In other cases brought since the passage of the Resolution, in which the Resolution has been invoked, the Commission has declined to grant relief because it found, upon the evidence, that the rates attacked were not unreasonable. For instance, in *Aberdeen Commercial Club* v. *Camas Prairie R. R. Co. et al.*, 126 I. C. C. 498, in which the rates on coarse grain from South Dakota to points in Montana, Idaho, Washington, and Oregon were attacked as unreasonable (report, p. 498), and in which the Hoch-Smith Resolution was invoked (report, p. 501), the Commission found that the rates assailed were not unreasonable and dismissed the complaint. Similar cases are: *Milk and Cream between New England Points,* 126 I. C. C. 38, 68–69; *Unmanufactured Tobacco from Kentucky,* 126 I. C. C. 93, 95; *Minnesota-Dakota Transit Millers* v. *A. A. R. R. Co. et al.,* 118 I. C. C. 585, 596–597; *Cream and Related Articles,* 115 I. C. C. 447, 450; *American*

Livestock Asso. v. *A., T. & S. F. Ry. Co. et al.*, 122 I. C. C. 609, 617–618.

The sole foundation for the assertion that the rates assailed were reasonable is that, upon the evidence of record in the earlier proceeding in 1923, Division 1 of the Commission found these rates to be not unreasonable. (100 I. C. C. 79.) The Division reached that conclusion upon the evidence before it in that case, as its duty compelled. *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, 91. Nor can that finding be construed as an affirmative holding that the rates were reasonable. Even so, it does not follow that those rates would be reasonable three years thereafter. *National Hay Association* v. *M. C. R. R.*, 19 I. C. C. 34, 37. Moreover, the Act (Secs. 16a and 17 (4)) provides for reconsideration by the Commission of its decisions, clearly contemplating even a reversal of its findings upon the same evidence. In that event the first report is deemed to have been withdrawn. *New England Divisions Case*, 261 U. S. 184, 203; *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 482. Hence, the only asserted basis upon which appellants rest their major premise disappears.

U. S. v. *N. Y. Central R. R.*, 263 U. S. 603, cited by appellants, is fundamentally different from the case at bar. The order there annulled was not predicated upon any finding that the standard passenger rates were unreasonable. Whether they

were unreasonable was not even considered by the Commission. Nor did its finding that the reduced rates were "just and reasonable for this class of travel" rest upon a finding or conclusion from evidence, but wholly upon its understanding that by the amendment Congress directed that "carriers shall be required to sell such a ticket at something less than the standard fare" (77 I. C. C. 200, 209), irrespective of the reasonableness of the standard fare; whereas, the amendment directed merely that the Commission should require carriers to issue interchangeable mileage or scrip coupon tickets "at just and reasonable rates."

In the case at bar the Commission made a finding of fact from the evidence that the assailed rates were unreasonable, and from that evidence found that the rates prescribed were reasonable. It construed the Resolution as granting no authority for reducing any rate without a finding of unreasonableness based upon evidence.

The commission does not interpret the resolution as impliedly repealing section 15a of the interstate commerce act

Concerning appellants' contention that the Commission, pursuant to the Resolution, has reduced a "reasonable" rate, which reduction will decrease their revenues $2,700,000 a year, thus in effect repealing section 15a:

We have previously pointed out the unsoundness of the argument that the reduced rate was "reasonable."

The claim of a $2,700,000 decrease in revenues completely ignores the fact that the minimum on grapes in connection with the reduced rate is increased from 26,000 to 30,000 pounds. Appellants figure the decrease in revenue as follows: The prescribed rate, $1.60, is 7½% less than the old rate of $1.73. The aggregate gross revenue in 1926 from this fruit traffic was $36,000,000; 7½% of that sum is $2,700,000. But the increase in the minimum on grapes to 30,000 pounds can not properly be ignored. If it is taken into consideration when applying the prescribed basis of rates to the 1926 traffic, the result is that the gross revenue for that year is reduced only 4.57%, or $1,764,335. Further reference to the importance of the increase in the minimum will be made *infra*, under the section dealing with alleged confiscation.

Reducing an unreasonable rate does not impliedly repeal section 15a, for that section itself (proviso to par. 2 and par. 17) reserves to the Commission the power to reduce unreasonable rates. (*Dayton-Goose Creek Ry.* v. *United States*, 263 U. S. 456, 483.)

The Commission's report in *Revenues in Western District*, 113 I. C. C. 3, is a sufficient answer to the suggestion that the Commission interprets the Resolution as repealing section 15a. It said (p. 11):

> Both section 15a and the resolution must be given a construction which makes them practicable and workable,

citing *New England Divisions Case,* 261 U. S. 184, 197.

> Congress could not have intended to repeal or suspend by indirection so important a provision of law as section 15a. (*Ibid.*, 12.)

The rate reductions prescribed by the commission will not seriously affect the carriers' revenues

Even if it be assumed that the reduced rates will lower the carriers' gross revenues $1,764,335 a year, nevertheless this reduction will not affect the revenues of any of them seriously or substantially. The order is directed to 450 railroads and if the loss were equally divided among them, it would amount to $3,921 each. But of course the same amount of the traffic does not pass over each of these 450 lines. Most of it moves over 10 principal trunk lines. If the loss were equally divided among these 10 only it would amount to $17,643 a year each, a wholly inconsequential sum. The following table shows the net railway operating income of the 10 lines above referred to for 1926 (R. 50):

	Income, 1926
Southern Pacific	$48,128,841
Santa Fe	55,493,700
Western Pacific	4,337,205
Union Pacific	27,852,065
North Western	22,295,139
Milwaukee	18,394,933
Pennsylvania	106,432,758
New York Central	72,131,053
Erie	18,052,723
Baltimore & Ohio	50,805,337
	423,923,745

When $1,764,335 is deducted from the aggregate net operating incomes of these 10 lines, that aggregate is reduced from $423,923,745 to $422,159,410, a reduction of .42 per cent.

This would have been the reduction if the prescribed basis had been in effect in 1926. But, as indicated later in this brief, it is probable that in the future there will be no decrease at all in the *net* revenues, despite the rate reduction, because of clearly anticipated increase in the volume of this fruit traffic and an increase in the car loading resulting from the raise in the minimum weight on grapes.

Contention that the commission construed the resolution as authorizing it to fix a rate yielding revenue only "slightly above operating expenses" is unfounded

Appellants contend that "the Commission misconstrued the Resolution in that it held that a rate which yielded the carrier an amount slightly above operating expenses was a lawful rate."

The Commission made no such holding. The expression "slightly above operating expenses," used so often in appellants' brief, is quoted from the following language in the Commission's report on further consideration, 132 I. C. C. 582, referring to a cost study submitted by the carriers:

> In other words, even if the cost study were accepted without question, it would indicate that the prescribed rates are slightly above the operating expenses and would confirm the impression obtained from compari-

> sons with other rates that the new rates, while probably of less than average profitableness, would still leave the traffic attractive to the carriers. But we have not accepted the cost study * * *. (R. 67.)

It is at once apparent that this language had no reference whatever to the Resolution.

The views of the Commission upon the question of what rates it may lawfully prescribe are indicated in its principal report. It there quoted from its report in *Grain and Grain Products,* 122 I. C. C. 235, 264, as follows:

> Rates that may lawfully be required must in principle be high enough to cover all of the cost that may fairly be allocated to the service plus at least some margin of profit. (R. 26.)

It also quoted from its report in *American Livestock Asso.* v. *A., T. & S. F.,* 122 I. C. C. 609, 617, in which it said:

> Rates that we may lawfully require must in principle be high enough to cover all the cost that may be fairly allocated to the service plus at least some margin of profit. * * * We say "in principle" because only rarely is definite information available as to such cost, and in practice rates must often be fixed largely by comparison with other rates. Of course, the other sections of the interstate commerce act must also be borne in mind in determining the lowest lawful rates in a particular situation.

The Commission cited as supporting authorities *Northern Pacific Ry.* v. *North Dakota,* 236 U. S. 585, and *Norfolk & Western Ry.* v. *West Virginia,* 236 U. S. 605. In the *North Dakota Case* the Court said:

> The legislature undoubtedly has a wide range of discretion in the exercise of the power to prescribe reasonable charges, and it is not bound to fix uniform rates for all commodities or to secure the same percentage of profit on every sort of business.

In the *West Virginia Case,* similar language was used:

> It was recognized [in the *North Dakota* Case] that the State has a broad field for the exercise of its discretion in prescribing reasonable rates for common carriers within its jurisdiction; that it is not necessary that there should be uniform rates or the same percentage of profit on every sort of business; and that there is abundant room for reasonable classification and the adaptation of rates to various groups of service.

We think the above quotations make it clear that the Commission was fully aware that neither under the Hoch-Smith Resolution or otherwise could it prescribe a confiscatory rate. There was no interpretation of the Hoch-Smith Resolution as authorizing or requiring rates to be fixed "slightly above operating expenses." Nor did the Commission interpret the Resolution as calling for the prescription of rates only slightly above the point of confis-

cation. Its interpretation was that the rates it prescribed in pursuance of the Resolution had to be "compatible with the maintenance of adequate transportation service."

The report shows that the commission exercised only its statutory power to regulate rates; it did not attempt to regulate the fruit industry

By the first paragraph of the Resolution the Commission is directed, in adjusting freight rates, to consider the conditions which at any given time prevail in our several industries, in so far as it is legally possible to do so, to the end that commodities may freely move.

In the case at bar the Commission gave consideration to the conditions which prevailed in the deciduous fruit industry to the extent that such conditions might have a bearing on the question of the reasonableness of the rates.

All freight classification, to a more or less extent, rests upon commercial conditions; in fact, freight rates can hardly be considered at all without a concurrent consideration of commercial conditions. Included under the head of commercial conditions are at least two important elements of rate-making, viz, (1) the value of the article transported and (2) the value of the service to the shipper. These two elements are related, in that the greater the value of the article the greater the value of the service.

The value of the service to the shipper has always been a factor in determining the justness and rea-

sonableness of freight rates; that factor goes deep into the question of commercial conditions, involving the welfare of the carriers, the shippers, and the public. In one of the earliest cases decided by the Commission, *Imperial Coal Co.* v. *P. & L. E. R. R. Co.*, 2 I. C. C. 618, 636, it was held that:

> The value of the service is generally regarded as the most important factor in fixing rates. It furnishes theoretically, at least, a foundation for an equitable apportionment that takes into account all interests, those of the carriers, the owners of the property carried, and the public, as well as the dissimilarities of merchandise. * * * The value of the service to a shipper in a general sense is the ability to reach a market and make his commodity a subject of commerce.

And in a later case, *Coke Producers' Asso.* v. *B. & O. R. R. Co.*, 27 I. C. C. 125, 132, it was said that—

> Consideration must be given to the value of the service. If some commodities and the industries that use them can well stand rates that yield liberal profit to the carrier it can afford to transport at low rates other commodities that could not move except under low rates, and so the commerce and welfare of the country is promoted, as it must be, by the widest possible general diffusion and exchange of the products of the mine, the forest, the farm, the mill, the furnace, and the factory.

Mr. Commissioner Lane, in *"Investigation and Suspension Docket 26,"* 22 I. C. C. 604, 623–624, has contributed the following able exposition of the question of the "value of the service":

> * * * In all classification consideration must be given to what may be termed public policy, the advantage to the community of having some kinds of freight carried at a less rate than other kinds. And this is the true meaning of the phrase "what the traffic will bear." It expresses the consideration that must be shown by the traffic manager to the need of the people for certain commodities. He accordingly imposes a higher rate upon what may be termed luxuries as compared with that imposed upon those articles for which there is a more universal demand. He also gives consideration to the fact that the rate so imposed enters into the ultimate price to the consumer to but a small degree when the article is one of high value, and that those in the community who can afford to purchase such articles can well afford to pay a rate greater than that which could reasonably be imposed upon the general public for commodities of common use. In this sense what the traffic will bear and the value of the service are analogous. No one would claim that a carrier was violating its duty under the law in charging three times the rate upon oriental rugs that it imposed upon cotton. This would not be undue discrimination as between commodities, even though it costs no more to transport the rugs than

it did the cotton, assuming both to be carried at the owner's risk, for the one does not compete with the other, and one may reasonably bear a higher rate than the other upon public grounds. It must be, therefore, that this Commission, under the amendment to section 1 passed by Congress in 1910, giving to us the control of freight classification, has power to determine the reasonableness of the differences that are made between the rates made applicable to the various kinds of commodities transported. We may not say that a rate shall be fixed so as to meet the requirements or needs of any body of shippers in their efforts to reach a given market, * * *. Neither could we fix an entire schedule of rates which would yield an inadequate return upon the fair value of the property used in the service given. There is, however, a zone within which we may properly exercise "the flexible limit of judgment which belongs to the power to fix rates." * * * There is no flexible limit of judgment if all rates must be upon a level of cost, and out of every dollar paid to the carrier must come a fixed amount of return for capital invested. The recognition of such a doctrine has never been suggested either by Congress or the Supreme Court. A just and reasonable rate must be one which respects alike the carriers' deserts and the character of the traffic. It can not be a rate that takes from the carrier a profit and thus favors the shipper at the carrier's expense, nor is it one which compels the shipper to

> yield for the transportation given a sum disproportionate either to the service given by the carrier or to the service rendered to the shipper. The words "just and reasonable" imply the application of good judgment and fairness, of common sense and a sense of justice to a given condition of facts. They are not fixed, unalterable, mathematical terms. Their meaning implies the exercise of judgment, and against the improper exercise of that judgment the Constitution gives protection, at least as far as the carriers are concerned.

It has always been recognized that rates depend largely upon the value of the commodity shipped. Obviously, "commercial conditions" control the value or price of an article. The Commission has recognized that an increase or a decrease in the value of the commodity transported is a circumstance which should be considered in determining the reasonableness of a rate. It will be remembered that in the case at bar it was shown that the value of the deciduous fruits in 1926 had receded to the point where they were less than 57% of the peak prices received in 1920, and that the 1926 prices were but 3.5% higher than the 1917 prices. In *Advances in Rates—Western Case,* 20 I. C. C. 307, 355, the Commission said:

> To be sure we can never depart from the *ad valorem* principle in the making of rates. No governmental railway system does. The national highways may as properly tax a

carload of tea with some relation to its value as the state may tax an import on the same basis, or the toll road distinguish between the automobile and the wheelbarrow. In all charges of an arbitrary character where public policy is involved, there is need that the greater burden shall fall upon those best able to support it. But classification of freight cares for value in the greater part.

In the same case on the same page the Commission said:

> In a land as intimately bound together in commerce as is this, where each city, village, and farm depends to large degree upon the resources of a nation for its supplies, there must arise questions of public welfare in the charges that the highways of the public may make altogether aside from questions of discrimination. It concerns us that we shall have the advantages of our varied resources; that New York and Chicago shall be made accessible to the fruit of Florida and California; that Minneapolis and Buffalo shall serve the thickly populated eastern states with their flour; that the wide plains of Texas and Wyoming shall be brought as near as possible to the cattle-consuming centers; that coal and lumber shall go where fuel and trees are scarce; and that, in short, our products and our people may be as mobile and as fluent as conditions may permit. Therefore, it may not answer public needs to always measure rates by any fixed standard, but the deviations from standard should be made

> primarily with an eye to public advantage * * *.

It seems to us that in any intelligent regulation of rates for the movement of the commerce of this country "commercial conditions" must necessarily be considered, not for the purpose of regulating the industry but for the purpose of regulating the rates. As stated in the *Import Rate Case* (*Tex. & Pac. Ry. Co.* v. *I. C. C.*), 162 U. S. 197, 219:

> Commerce, in its largest sense, must be deemed to be one of the most important subjects of legislation, and an intention to promote and facilitate it, and not to hamper or destroy it, is naturally to be attributed to Congress. The very terms of the statute, that charges must be reasonable, that discrimination must not be unjust, and that preference or advantage to any particular person, firm, corporation, or locality must not be undue or unreasonable, necessarily imply that strict uniformity is not to be enforced; but that all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies, and of the producers, shippers and consumers, should be considered by a tribunal appointed to carry into effect and enforce the provisions of the act.

Appellants cite the *Willamette Valley Case* (*Southern Pacific Co.* v. *Int. Com. Comm.*), 219 U. S. 433. The differentiating feature of that case is that, as shown by page 447 of the Court's opinion,

no evidence whatever bearing upon the issue as to the reasonableness of the rate there in question was introduced.

The *Union Pacific Case* (*Int. Com. Comm.* v. *Union Pacific R. R.*), 222 U. S. 541, is in point. In that case much testimony was introduced before the Commission relating to the lumber industry. The Commission's order was attacked on the ground that the Commission was influenced solely by a consideration of the effect of the advance in rates on the lumber industry; "there were mutual criminations and recriminations of prosperity—the lumber men insisting that the railroads had made large profits under the old rate and did not need the advance, which would destroy the ability of the lumber men to ship lumber to the east." The court held that while there was language in the Commission's opinion which, looked at alone, might suggest that the Commission was attempting to decide more than the single question as to what was a reasonable rate, yet, taking the opinion as a whole, it affirmatively appeared that the Commission confined itself to the exercise of its statutory power to fix rates. We submit that this is true in the case at bar.

III

THE PRESCRIBED RATES WERE NOT SHOWN TO BE CONFISCATORY; ON THE CONTRARY, THE EVIDENCE INDICATES THEY WILL YIELD A SUBSTANTIAL PROFIT

Appellants contend the prescribed rates will produce an average revenue of $467.07 per car, that

the cost of transporting the fruit will be $470.06 per car, and therefore the prescribed rates will cause a loss of $2.99 per car.

The revenue per car is computed by applying the prescribed rate of $1.60 to the average weight per car in 1926 of all deciduous fruits except grapes, and, as to grapes, to a weight of 30,000 pounds, the minimum on grapes applying in connection with the prescribed rate. If in the future grapes are loaded to exactly the minimum of 30,000 pounds and the average weight of the other deciduous fruits remains the same as in 1926, the average load will be 29,192 pounds. This figure multiplied by the prescribed rate of $1.60 per 100 pounds equals $467.07, the estimated per car revenue suggested by the appellants.

The cost of the service is predicated upon a cost study, the results of which (a single sheet) were introduced in evidence before the Commission, Conrad's Exhibit No. 252. This exhibit purported to show the per car cost in September, 1923, of transporting *grapes* from California to Chicago over the Santa Fe. This cost, as shown therein, is $350.23. Appellants admit that two items totaling $9 per car were improperly included in that sum. When this $9 is deducted the figure $350.23 becomes $341.23. Dividing the latter sum by 2,331, the average mileage from the California shipping points to Chicago, a cost per car-mile of 14.64 cents is obtained.

Appellants assume that the cost per car-mile is the same east of Chicago as west thereof; and, therefore, in order to obtain the cost for the weighted average haul, 2,970 miles, the car-mile cost of 14.64 cents as indicated for the service west of Chicago is used for the whole distance, resulting in a cost of $434.81 (2,970 multiplied by 14.64 cents). Included in this cost is an amount representing the cost of the westbound movement of the empty cars, based on a ratio of 68.78 to the loaded movement. Appellants admit this ratio is erroneous, and when it is reduced to 67.58, said to be the correct ratio, the figure $434.81 becomes $433.68. (See p. 171 of appellants' brief, which refers to appellants' petition to the court below as authority for this last-mentioned figure.) The sum of $36.38 representing taxes (8.39% of $433.68) is added to the figure $433.68, resulting in $470.06 per car, the amount alleged by appellants as the total cost of the service.

This cost study signally fails to prove the cost of transporting the deciduous fruit traffic, as hereinafter demonstrated. But it may safely be assumed that the carriers have figured in all the known costs, and that the estimates are liberal; and we wish now to use it as a basis of indicating that the prescribed rates, instead of being confiscatory, will yield a substantial profit.

It is indisputable that the study purports to cover the cost of transporting only *grapes*. Appel-

lants have compared the cost of transporting grapes with the average revenue on all deciduous fruits. This brings improper results because grapes load more heavily than the other deciduous fruit. When the full costs assigned by appellants on *grapes* are set against the revenue on *grapes* under the prescribed rate of $1.60[4] it is shown that the prescribed rates yield a substantial profit.

The carload minimum weight on grapes applying in connection with the prescribed $1.60 rate is 30,000 pounds. Consequently the carriers will receive, in all instances, revenue on a weight of 30,000 pounds even though a less weight is loaded into the car, with the result that the per car revenue will never be less than $480.00 per car. This is $9.94 higher than the full cost of $470.06 alleged by appellants.

But since the minimum weight is 30,000 pounds, it is practically certain that the average weight will be over 30,000 pounds, especially since, for the purpose of calculating this average, actual weights lower than the minimum will be treated as the minimum—the revenue basis. If the average weight is only 31,000 pounds, the per car revenue will be $496, or $25.94 per car higher than the full cost of $470.06 alleged by appellants. The average weight of grapes shipped during the entire year 1922 was

[4] No attempt was made by the carriers to show the costs of Group J, to which the rate prescribed is $1.50, because of the negligible volume of traffic to that group.

32,940 pounds. (See report in earlier case, 100 I. C. C. 79, 83.) At the rate of $1.60 the per car revenue at that weight is $527.04 per car, which is $56.98 per car higher than the appellants' full assigned cost.

The appellants alleged cost of transporting grapes was admittedly the 1923 costs. The conclusion to be drawn from the evidence is unescapable that the costs in 1926 were substantially lower, for two reasons: (1) There was a much larger volume of the fruit traffic in 1926 than in 1923; 69,777 cars in 1923, as against 78,803 cars in 1926 (R. 223); and the appellants estimate that in 1927, 89,835 cars moved (appellants' brief, p. 9), while a witness for the complainant testified that if the barrier of transportation charges can be lowered and other costs reduced in some measure, the volume of the movement would increase by the year 1930 to 100,000 carloads. (R. 224.) Cost of service does not increase proportionately with an increase in the volume of traffic. "It is recognized by all authorities that the cost per unit of freight decreases with the volume." *L. & N. R. R. Coal Rates,* 26 I. C. C. 20, 31. This principle has often been remarked by this Court (*Brush Elec. Co.* v. *Galveston,* 262 U. S. 443)—

> An actual test of these rates may bring a larger return, by bringing about an increase of business.

Compare *Wilcox* v. *Cons. Gas Co.,* 212 U. S. 19, 51.

(2) Operating costs on the Santa Fe were lower in 1926 than in 1923. As stated in the Commission's report on further consideration, "it is at least doubtful whether the more economical operations in 1926 would not have affected the expense apportioned to the fruit traffic. In 1926 the operating ratio of the Santa Fe was 65.15, as compared with 72.51 in 1923," a drop of over 10 per cent.

If, in view of the increase in the volume of the traffic and the economies effected in operation, the cost of the service was lowered only 10 per cent (a very moderate estimate) the operating cost of $433.68 alleged by appellants would become $390.31 and the total, including taxes, of $470.06 would become $426.29, and this would result in a profit of $53.31 per car from the guaranteed revenue of $480 per car on grapes; a profit of $69.31 if the average weight of grapes is 31,000 pounds with revenue of $496 a car, and a profit of $100.35 per car if the average weight is 32,940 pounds, as it was in 1922, with revenue of $527.04 per car. Of course, these amounts would necessarily be somewhat lower in view of the added cost of transporting the additional weight.

It is also stated in the last-mentioned report that "the $433.68 referred to above as the corrected expense per car [before taxes were added] for a distance of 2,970 miles is based on a car-mile cost found for a haul of 2,331 miles, including handling on the expensive originating division with cost of

35.85 cents a car-mile," which as shown was virtually three times higher than on any other division of the Santa Fe. (R. 482.) "If the mileage and cost of this division be set aside before computing the car-mile cost to be applied for the remainder of the 2,970-mile haul, the $433.68 would become $426.48 * * *."

Additional possible defects come to the Commission's attention:

> The cost per-mile of refrigerator repairs was computed upon the basis of 110 per cent of the average cost per car-mile of repairing all freight cars on the ground that "refrigerator freight cars cost about 110 per cent of the average cost to maintain freight cars." Apparently no consideration was given to the fact that with a difference in the average haul of the fruit traffic as compared with that of all traffic, the car-repair cost *per car-mile* for this traffic may be less than for all freight cars even though the cost *per car* is 10 per cent greater. We also note that 10 per cent was added for the expense of carrying company material. It is questionable whether so large an allowance for this purpose would be generally applicable. (R. 68.)

When these various matters are considered and allowed for it clearly appears that the cost study submitted by the carriers itself strongly indicates that the rates prescribed by the Commission, instead of being less than the cost of the service, will yield the carriers a substantial profit.

The increase in the minimum weight on grapes from 26,000 to 30,000 pounds has an important bearing when revenues are considered. Grapes constitute about 80% of this fruit tonnage. Under the $1.73 rate, minimum 26,000 pounds, the minimum per car revenue was $449.80, whereas under the reduced rate of $1.60, minimum 30,000 pounds, the lowest possible per-car revenue is $480, which is $30.20 *higher* than under the old basis.

In the well-known *Lemon Case, Arlington Heights Fruit Exchange* v. *Southern Pac. Co.*, 22 I. C. C. 149, in which the Commission reduced the transcontinental rate on lemons from $1.15 to $1.00, and at the same time increased the minimum from 26,200 pounds to 34,000, its order being upheld by the Commerce Court and by this court, 203 Fed. 56, and 231 U. S. 736, the Commission said:

> There can be little doubt from a purely transportation standpoint, having reference mainly to the cost of the service, a $1.00 rate with a minimum of 34,000 pounds, is better business than a minimum of 26,200 pounds at a rate of $1.15.

As shown by past experience, an increase in the minimum results in a higher average loading. The higher average loading will lower the cost of the carriage and result in greater net returns, for, as stated by the Commission in *Transportation of Wool, etc.*, 23 I. C. C. 151, 167, it is axiomatic that the cost of the carriage is decreased in proportion

as the car-loading can be increased. In the last-quoted case, the Commission further said:

> * * * In these days, and especially in case of these transcontinental lines, where the limit of their present facilities has been reached, where double tracks are being provided because single tracks are no longer sufficient, where additional cars and engines are continually being called for, it certainly is in the interest of both railroad and shipper to secure the heaviest possible loading and thereby the most economical movement of this and every other commodity.

The carriers' cost study can not be accepted for the following reasons:

(*a*) It purported to show the cost of transporting grapes only, and did not purport to show the cost of transporting any of the other deciduous fruits.

(*b*) It did not purport to show the cost of the service on each of the numerous railroads which handled the business, but only on one railroad, the Santa Fe.

(*c*) It covered shipments moving in one month only—September, 1923, which was over six years ago.

(*d*) There was nothing to show that the present costs on the Santa Fe are the same, or approximately the same, as they were on the Santa Fe in that one month.

(*e*) There is nothing to show that the costs on the other lines in September, 1923, were the same, or approximately the same, as they were on the Santa Fe at that time.

(*f*) The cost study consisted for the most part merely of estimates of the carrier's employees. It was admitted before the Commission that but small part of the costs were directly assigned, i. e., $55.92 out of $470.06 per car, and that all of the balance were "unallocatable expenses." (R. 476.)

(*g*) The exhibit introduced in evidence before the Commission incorporated only the bare result of the cost study, that is, gave only the final figures, and was not supported by any details, so that it was impossible to check even the mechanical or clerical accuracy of the results. The exhibit as submitted to the Commission consisted essentially of nothing more than an assertion that the costs were so much per car.

The carrier's weak attempt to show the cost of this service is an admission of the well-known fact that it is impossible to ascertain the cost of transporting a single commodity. In *Cattle Raisers' Asso.* v. *M. K. & T. Ry. Co.*, 11 I. C. C. 296, 335, it was said:

> It has often been said in this and in other cases by traffic officials that it is impossible to determine the cost of moving a particular kind of freight.

In *I. C. C.* v. *Union Pacific R. R.*, 222 U. S. 541, there was no appeal from the Master's finding that:

> The carriers concede that they are unable to determine the cost of this traffic, in and of itself, and that they are unable to say, with any satisfactory accuracy whether or not they make a profit upon it; * * *.

In *A. T. & S. F. Ry. Co.* v. *United States*, 203 Fed. 56, affirmed 231 U. S. 736 (known as the *Lemon case*), the Commerce Court said:

> That the Commission, in reaching this conclusion, [that the $1.00 rate on lemons from California to eastern points was very considerably in excess of the mere out-of-pocket expense, but, based upon the evidence before it, it even exceeded that part of the entire operating costs fairly to be apportioned to this particular traffic, and thus, contributed, to some extent, the payment of interest charges and dividends] failed to follow the expert evidence offered by the railroads in the matter of proportionate operating cost would not justify this court in annulling the order, especially *as it is concededly impossible to determine with accuracy the fair proportionate cost of transporting any single kind of merchandise.* (Italics ours.)

Appellants made no effort to show that the prescribed rates would result in a loss when applied to the entire deciduous fruit traffic. Such a showing is insufficient to support a claim of confiscation. There must be a showing in respect of the entire

traffic to which the rate applies. *Northern Pacific Ry.* v. *North Dakota*, 236 U. S. 585, 604.

The appellants have totally failed to meet the burden cast upon them by the law of proving that the prescribed rates are confiscatory.

CONCLUSION

The decree of the lower court denying the prayer for injunction and dismissing the bill for want of equity should be affirmed.

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FEBRUARY, 1929.

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No. 7

In the Supreme Court of the United States

OCTOBER TERM, 1929

THE ANN ARBOR RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTE FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION, AND THE CALIFORNIA GROWERS' & SHIPPERS' PROTECTIVE LEAGUE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

ON REARGUMENT

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 7

THE ANN ARBOR RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, et al., Appellants

v.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION, and the CALIFORNIA GROWERS' & SHIPPERS' PROTECTIVE LEAGUE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

On Reargument

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS

The specially-constituted District Court filed two memorandum opinions. (R. 99, 105.) The first is reported in 30 F. (2d) 940.

The reports of the Interstate Commerce Commission appear as Docket No. 19130, *California Growers' & Shippers' Protective League* v. *Southern Pacific Company et al.*, 129 I. C. C. 25 (R. 16–65), and 132 I. C. C. 582 (R. 65–69).

QUESTIONS PRESENTED

In a proceeding begun upon complaint of California producers and shippers of deciduous fruits, the Interstate Commerce Commission, after full hearing and upon a voluminous record, issued its order requiring the numerous common carriers engaged in the transportation of those commodities to destinations in the east to make reductions in the rates thereon.

The questions, which relate to the validity of the above order, are:

(1) Whether the Commission so misconstrued the Interstate Commerce Act and the Hoch-Smith Resolution, that its order was beyond the power conferred upon it thereby.

(2) Whether the Hoch-Smith Resolution is unconstitutional, either as (*a*) violating the due process clause of the Fifth Amendment, or (*b*) as beyond the power of Congress under the commerce clause.

(3) Whether the reduction of rates as set forth in the order was not supported by any substantial evidence or was confiscatory.

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act, c. 104, 24 Stat. 379, 380, as amended by the Transportation Act, 1920, c. 91, 41 Stat. 456, 475, 479, 484, 488, 491 (U. S. C. Title 49, Secs. 1, 3, 15, 15a):

SEC. 1. * * *

(5) All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: * * *.

SEC. 3. (1) That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

SEC. 15. (1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing

under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such viola-

tion to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

SEC. 15a. * * *

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided,* That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

* * * * *

(17) The provisions of this section shall not be construed as depriving shippers of their right to reparation in case of overcharges, unlawfully excessive or discriminatory rates, or rates excessive in their relation to other rates, but no shipper shall be entitled to recover upon the sole ground that any particular rate may reflect a proportion of excess income to be paid by the carrier to the Commission in the public interest under the provisions of this section.

The so-called Hoch-Smith Resolution (43 Stat. 801, Public Res. No. 46, S. J. Res. 107; U. S. C. Title 49, Sec. 55), approved January 30, 1925, is as follows:

CHAP. 120.—Joint Resolution Directing the Interstate Commerce Commission to take action relative to adjustments in the rate structure of common carriers subject to the Interstate Commerce Act, and the fixing of rates and charges.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared to be the true policy in rate making to be pursued by the Interstate Commerce Commission in adjusting freight rates, that the conditions which at any given time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move.

That the Interstate Commerce Commission is authorized and directed to make a thorough investigation of the rate structure of common carriers subject to the interstate commerce act, in order to determine to what extent and in what manner existing rates and charges may be unjust, unreasonable, unjustly discriminatory, or unduly preferential, thereby imposing undue burdens, or giving undue advantage as between the various localities and parts of the country, the various classes of traffic, and the various classes and kinds of commodities, and to make, in accordance with law, such changes, adjustments, and redistribution of rates and charges as may be found necessary to correct any defects so found to exist. In making any such change, adjustment, or redistribution the commission shall give due regard, among other factors, to the general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years to a natural and proper development of the country as a whole, and to the maintenance of an adequate system of transportation. In the progress of such investigation the commission shall, from time to time, and as expeditiously as possible, make such decisions and orders as it may find to be necessary or appropriate upon the record then made in order to place the rates upon designated classes of traffic upon a just and reasonable basis with rela-

tion to other rates. Such investigation shall be conducted with due regard to other investigations or proceedings affecting rate adjustments which may be pending before the commission.

In view of the existing depression in agriculture, the commission is hereby directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service: *Provided,* That no investigation or proceeding resulting from the adoption of this resolution shall be permitted to delay the decision of cases now pending before the commission involving rates on products of agriculture, and that such cases shall be decided in accordance with this resolution.

STATEMENT

The growing and shipping of deciduous fruits is one of the great basic industries of California. These fruits are grown throughout the State, from the Imperial Valley north to Redding. The soil and climate are peculiarly adapted to fruit and vegetable culture, and there are large areas that can be used for those purposes only. The growing of deciduous fruits is the most important single agricultural interest in the State, as shown by the values

of its several farm products in 1925: Deciduous fruits $105,756,000, citrus fruits $85,243,000, vegetables $52,047,000, and main field crops $194,675,000. (Ex. 16, R. 216.)

Not more than 5 per cent of the production of fresh fruits in California is consumed there, and most of the product must of necessity move to the large consuming territory in the East.

The principal deciduous fruits shipped from California are grapes, peaches, pears, plums, apricots, cherries, and apples. Practically all of the cherries are shipped by express and most of the peaches and apricots are utilized by the canneries and dried-packing plants within the State.

The principal originating trunk lines are the Southern Pacific, the Santa Fe, and the Western Pacific. The Los Angeles & Salt Lake, a part of the Union Pacific system, handles a relatively small amount of the traffic. The traffic moves over these lines and their connections chiefly to the large cities in the territory east of the Mississippi River, and north of the Ohio.

The fruit is shipped in refrigerator cars. An extra charge in addition to the line-haul rate is made for refrigeration, averaging about $100 a car. (Ex. 26, R. 229.) No complaint was made against the assessment of an additional charge for refrigeration, nor against its amount.

The complaint of the California Fruit Growers' & Shippers' Protective League, before the Commission, brought in issue the deciduous fruit rates

from California to the territory east of the Rocky Mountains. That territory has been divided by the carriers for the purpose of making transcontinental rates into 12 groups, designated by letters, viz, groups A, B, C, D, E, F, G, H, J, K, L, and M. The territorial limits of these groups are shown in the sketch appended to this brief. The most westerly group is "J," embracing the eastern portions of Colorado and New Mexico. With the exception of Group J, the rates applicable to the California deciduous fruit traffic are "blanketed" over all these groups, with the result that the same rate applies from California to any point east of Group J. To Group J the rate is slightly lower than the blanket rate. This enormous blanket, undoubtedly the largest in the United States, was established voluntarily by the carriers, and they desire that it be continued, as do the shippers. All parties to the proceeding agreed that the blanket should not be broken up. The Commission did not disturb it.

When prices are low, transportation charges become an important item of expense in the production and marketing of fruit. That is the present condition of the industry. Since 1922, the industry has suffered because of a marked decline in prices received for the fruit without corresponding reductions in the cost of production, including transportation to markets in the East, and this recession in prices, and consequent economic depression, has continued practically unabated since that date.

Proceedings before the Commission

A. Proceedings in earlier case

Before discussing the proceeding in which the Commission issued the order here assailed, it should be stated that three years previously the same rates were before Division 1 of the Commission upon a complaint filed August 31, 1923, by the same complainant invoking sections 1 and 3 of the Interstate Commerce Act, but upon a less extensive and exhaustive record. *California Growers' & Shippers' Protective League* v. *Southern Pacific Co. et al.*, 100 I. C. C. 79 (Docket 15137), decided June 25, 1925. While that case was pending decision, the Hoch-Smith Resolution was enacted January 30, 1925, carrying a provision that cases then pending before the Commission involving rates on agricultural products should be decided in accordance with the Resolution. Division 1 said, at page 106 of its report:

> We have given consideration to the matters mentioned in the resolution—

but, nevertheless, found that the rates were not unreasonable or unduly prejudicial, and dismissed the complaint, with the statement, however, at page 108:

> This finding is without prejudice to any conclusion which may be reached upon the later and more comprehensive record concerning the relation of railroad rates to agriculture which is expected to be developed in Docket No. 17000.

Docket No. 17000 was the general investigation of the rate structure which the Commission had instituted on its own initiative.

On March 2, 1926, the full Commission denied reargument. (R. 6, 18.)

B. Proceedings in present case

The proceeding which resulted in the issuance of the order assailed by appellants, was instituted by complaint (R. 139) filed by the same complainant December 27, 1926 (R. 6), alleging that the rates of $1.62,[1] carload minimum weight 26,000 pounds, to Group J, and $1.73, with the same minimum, to the other groups, on fresh deciduous fruits, other than apples, were unjust and unreasonable, in violation of Section 1 of the Interstate Commerce Act, unduly and unreasonably prejudicial, in violation of Section 3 of that Act and higher than the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and upon an unjust and unreasonable basis with relation to other rates, in violation of the Hoch-Smith Resolution. (R. 146.)

It was further alleged that a just, reasonable, nonprejudicial and lawful rate for the transportation of deciduous fruits, in carloads, from points in the State of California to points in all the aforesaid groups should not exceed $1.44, this being the rate that had been in effect immediately following the general increase of 25% effected June 25, 1918.

[1] All rates are herein stated in amounts per 100 pounds.

The rate on apples was lower than on other deciduous fruits, being $1.41 to Group J, and $1.50 to the other groups. The complaint did not attack the reasonableness of these rates on apples. The term "deciduous fruits" will be used hereinafter to mean deciduous fruits other than apples.

It was also alleged that for many years prior to June 25, 1918, the rate maintained for the transportation of deciduous fruits from California to the above-mentioned groups was $1.15 per 100 pounds; that this rate was increased on June 25, 1918, to $1.44 per 100 pounds; that the latter rate remained in effect until August 26, 1920, when it was increased to $1.80 to Group J, and to $1.92 to the other groups; that the last-named rates remained in effect until January 1, 1922, when they were reduced to $1.62 and $1.73, respectively, and that the latter rates had been maintained continuously since the last-mentioned date, without reduction, notwithstanding that the volume of the deciduous fruit traffic had enormously increased, and notwithstanding that subsequently to January 1, 1922, the defendants had substantially reduced the rates maintained and enforced by them for the transportation of a large number of commodities other than deciduous fruits, with the result that the California fruit growers and shippers were required to pay for the transportation of their traffic rates which were disproportionately high and which furnished an undue and unjust propor-

tion of the revenues of the defendant carriers. (R. 142–145.)

The Railroad Commissions of the States of California, Arkansas, and South Dakota, the California Fruit Exchange, the California Farm Bureau Federation, the Arkansas Packing Corporation, and the Ozark Fruit Growers Association intervened in the proceeding before the Commission in support of the complaint. The Department of Agriculture and Markets of the State of New York, and the Departments of Agriculture of Pennsylvania and Michigan intervened in opposition to the complaint. (R. 163.)

After full hearing, briefs were filed and the case was orally argued to the entire Commission. July 20, 1927, the Commission (not a division thereof) issued its report and order, *California Growers' & Shippers' Protective League* v. *Southern Pacific Co. et al.*, 129 I. C. C. 25.

The evidence adduced at the hearing, as will be demonstrated hereinafter, was exhaustive in detail and included within its scope almost every conceivable type of information pertinent to a determination of the issues. The mass of facts contained in the record is stated in condensed form in the Commission's report (R. 16–65), and upon these facts the order (R. 6–7) is based.

The Commission's finding was as follows (R. 59):

> We are of the opinion and find upon a consideration of the whole record that the

rate of $1.73 as applied to the transcontinental shipment of deciduous fruits from California to Groups A to M inclusive, except Group J, is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.60; and that the rate of $1.62 currently applicable to Group J points is, and for the future will be, unreasonable to the extent that it exceeds or will exceed $1.50 and that such rates are the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and are necessary to promote the freedom of movement by defendants of the specified products of agriculture, now affected by existing depression in agriculture. In publishing these rates defendants may increase the carload minimum on grapes to 30,000 pounds.

September 10, 1927, the defendant carriers petitioned the Commission for reconsideration upon the record as made. (R. 7.) November 14, 1927, the Commission issued its report on further consideration, 132 I. C. C. 582 (R. 65), adhering to its former findings and affirming its order of July 20, 1927, except as modified by its order of October 14, 1927, which relieved the carriers of the necessity of establishing the prescribed rates over routes via north Pacific Coast gateways. The prescribed rates became effective February 10, 1928, and are now in force.

Proceedings in court below

November 23, 1927, the appellants filed their petition to enjoin the Commission's order. (R. 1.) A specially-constituted District Court (Circuit Judge Rudkin of the Ninth Circuit, and District Judges St. Sure and Kerrigan) heard appellants' motion for a temporary stay and interlocutory injunction. January 18, 1928, the District Court rendered its memorandum opinion, denying the motion. (R. 99.) After final hearing, the court, on May 3, 1928, rendered its memorandum opinion. (R. 105.) May 9, 1928, final decree was entered, dismissing the bill for want of equity. (R. 107.)

Prior proceedings in this Court

May 11, 1928, appellants filed a "Motion for Stay or Suspension of Operation of Order of Interstate Commerce Commission pending Appeal." May 21, 1928, this Court heard oral argument upon the motion and on May 28, 1928, denied it. On February 25, 1929, this appeal was argued. On May 13, 1929, the cause was restored to the docket for reargument.

SUMMARY OF ARGUMENT

I. The Commission's order was based on no mistake of law and was within the powers conferred upon it by the Interstate Commerce Act and the Hoch-Smith Resolution.

The Commission correctly construed the Resolution as prescribing a test to be observed by it in the determination of the reasonableness of rates on

agricultural products affected by depression. The Resolution sets no new standard of lawfulness, in that it did not contemplate that any rate should be fixed under it which would not have been a lawful rate under the prior law. The rate fixed under the Resolution must be within the so-called zone of reasonableness. But the value of the commodity and the value of the service have always been recognized as factors in the determination of a reasonable rate. The Commission correctly construed the Resolution as requiring it to weigh all the factors normally entering into the determination of the reasonableness of any rate and to fix rates on agricultural products suffering from depression as near the lower limit of the zone of reasonableness as would be compatible with the maintenance of an adequate transportation service. That Congress intended by the Resolution to prescribe a test for the fixing of such rates is shown by the language of the Resolution as well as its historical background and legislative history.

The Commission properly construed the third paragraph of the Resolution as applicable to particular cases. No sufficient reason appears for ascribing to Congress an intent that, except for proceedings pending at the time of its passage, it should only be applied through the comprehensive and necessarily protracted investigation of the entire rate structure.

The Commission has construed the Resolution in harmony with, and not as impliedly repealing, Section 15a of the Interstate Commerce Act. This is shown both by its report in this case and by its holdings in prior decisions under the Resolution.

The Commission did not construe the Resolution as authorizing it to reduce a rate solely because of the depression of the industry, and it gave no undue weight to the economic condition of the complainant's business. Its construction of the Resolution in this and other cases has been that economic considerations furnish one, but not the controlling, factor in the determination of the reasonableness of a rate. It gave proper consideration to the requirement of the Resolution that the rates ordered should promote freedom of movement of agricultural products.

The Commission did not construe the Resolution as directing it to fix rates only "slightly in excess of operating expenses." In this, as well as in other cases, the Commission has construed the Resolution as requiring a rate high enough to cover all the costs that should fairly be allocated to the service under the decisions of this Court, plus at least some margin of profit.

II. The Hoch-Smith Resolution is a valid exercise of the power of Congress to regulate interstate commerce.

The requirement of the Resolution that the rates must be "lawful" necessarily implies that they shall

not be confiscatory. But it is well established that there is a wide field of legislative discretion which permits variety in classification of rates, and there is no constitutional requirement that all rates shall be so fixed as to afford the same percentage of profit. The special treatment of agriculture in the Resolution is not without any reasonable basis or purely arbitrary. The Resolution does not violate the Fifth Amendment.

The Resolution is not an attempted regulation of industry, and does not grant "bounties," "special privileges," or "subsidies." This Court has upheld congressional legislation intended to insure the preservation of a comprehensive system of railroads by relieving the financial necessities of weaker roads which were essential thereto. It is equally within the power of Congress to insure, through reasonable rate regulation, the free movement of essential commodities.

III. The reductions in rates ordered by the Commission are supported by substantial evidence and are not shown to be confiscatory.

The voluminous evidence bearing on the reasonableness of the rate would have amply sustained reduction ordered even apart from the Hoch-Smith Resolution.

The increase in the carload minimum rate on grapes, which constituted 75 to 80 per cent of the entire deciduous fruit traffic, has an important bearing on the reasonableness of the rate and the

carriers' revenues thereunder. The minimum weight is, in fact, an essential part of any carload rate.

The Commission gave consideration to the requirements of the Resolution that the rates should be compatible with the maintenance of adequate transportation service. The evidence showed increasing operating returns in the case of most of the principal carriers engaged in handling this traffic.

There was no substantial evidence that the rates prescribed would be confiscatory. The Commission was justified in regarding the cost study submitted by appellants in this connection as of slight probative value.

ARGUMENT

I

THE COMMISSION'S ORDER WAS BASED ON NO MISTAKE OF LAW AND WAS WITHIN THE POWERS CONFERRED ON IT BY THE INTERSTATE COMMERCE ACT AND THE HOCH-SMITH RESOLUTION

THE COMMISSION CORRECTLY CONSTRUED THE RESOLUTION AS PRESCRIBING A TEST TO BE OBSERVED BY IT IN THE DETERMINATION OF THE REASONABLENESS OF RATES ON AGRICULTURAL PRODUCTS AFFECTED BY DEPRESSION

The Hoch-Smith Resolution is a joint resolution passed by the Senate and the House, and approved by the President January 30, 1925. It is a consolidation of two resolutions, H. J. Res. 141, introduced by Congressman Homer Hoch, of Kansas (member of the Committee on Interstate and Foreign Com-

merce), and S. J. Res. 107, introduced by Senator Ellison D. Smith, of South Carolina (then Chairman of the Committee on Interstate Commerce).

Having been passed by both houses of Congress and signed by the President, the Resolution has the force of statute law. *Levey* v. *Stockslager,* 129 U. S. 470; *Fourteen Diamond Rings* v. *United States,* 183 U. S. 176, 184; *United States* v. *Chavez,* 228 U. S. 525.

The Resolution is in three paragraphs, the first of which declares it to be the true policy in rate-making to be pursued by the Commission in adjusting freight rates, that the conditions which at any given time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move.

The second paragraph directs the Commission to make a nation-wide investigation of all rates and to correct defects. This the Commission is doing. *Rate Structure Investigation,* Docket No. 17000. (Its order instituting this investigation is in the record, pp. 514–522.)

The third paragraph, which is more particularly involved here, provides that,

> In view of the existing depression in agriculture, the commission is hereby directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depres-

sion, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service: *Provided,* That no investigation or proceeding resulting from the adoption of this resolution shall be permitted to delay the decision of cases now pending before the commission involving rates on products of agriculture, and that such cases shall be decided in accordance with this resolution.

The Commission's interpretation of this third paragraph, as explained in its report (R. 26–28), is in substance as follows:

The Resolution sets no new standard of lawfulness of rates, but provides, in effect, that to the extent that there are flexible limits to the Commission's discretion, the Commission shall require the maintenance of the lowest rates on products of agriculture falling within those flexible limits. Rates that may lawfully be required must in principle be high enough to cover all of the cost that may fairly be allocated to the service plus at least some margin of profit. But it has always been recognized that the burden of transportation may reasonably be adjusted with some regard to the value of the service; in other words, that the higher grade, more valuable commodities may be required to pay a greater margin of profit than those that are of lower grade and less value. The substance of the provision of the Resolution is that agricultural products affected by depression shall in this respect be included in

the class of most favored commodities, to such extent as may be "compatible with the maintenance of adequate transportation service." Other sections of the Interstate Commerce Act must be borne in mind in determining the lowest lawful rates in a particular situation. The Resolution is in effect a direction to the Commission to give agricultural commodities affected by depression the lowest rates that it is possible to give without running counter to the provisions of the Interstate Commerce Act and the carrier's rights under the Constitution. Section 1 of the Act requires that all rates shall be just and reasonable. What is a reasonable rate? It may be said to be somewhere between the minimum charge that can be made for the service and permit the carrier to live, and the maximum charge that can be borne by the shipper. The legislature or its administrative agent may not make rates so as to confiscate the carrier's property. The carrier on the other hand may not make rates which are unjust to those who by economic necessity are compelled to employ its services. Here, then, is the minimum of legislative power and the maximum of the carrier's power. Between these limits lies a zone, indefinite and variable, a "zone of reasonableness," within which any rate is just and reasonable to the carrier, as well as just, fair, and reasonable to the shipper that utilizes the carrier's services. The Commission concludes that "the lowest possible lawful rates" which it may prescribe under the Resolu-

tion on any given agricultural traffic as to which depression has been shown must be somewhere within the zone of reasonableness permitted by the flexible limits of discretion reposed in the Commission, and that such rates must be put as near the lowest limit or level of that zone as is compatible with the maintenance of adequate transportation service.

The Resolution itself, by the use of the words "*lowest* possible lawful rates," recognizes that there may be more than one lawful rate, that there is a "zone of reasonableness."

That there are flexible limits to the Commission's discretion in the prescription of rates for future application results from the fact that there is no way by which it may be determined with mathematical accuracy just how much a particular rate should be. As expressed in *Interstate Commerce Commission* v. *Union Pacific R. R.*, 222 U. S. 541, 550, "there is no possibility of solving the question as though it were a mathematical problem to which there could only be one correct answer."

The Act requires that all rates shall be just and reasonable and reposes authority in the Commission to determine and prescribe rates which meet that standard. (Sec. 1 (5); Sec. 15 (1).) But since it is impossible to determine with accuracy what rates are just and reasonable, that question is left to the judgment and discretion of the Commission. Its judgment is to be formed from the evidence; and its conclusion is accepted as final when its action is not arbitrary or otherwise unlawful.

To quote again from the *Union Pacific* case (p. 550):

> With that sort of evidence before them, rate experts of acknowledged ability and fairness, and each acting independently of the other, may not have reached identically the same conclusion. We do not know whether the results would have been approximately the same. [Here the Court uses the language above quoted.] Still there was in this mass of facts that out of which experts could have named a rate. The law makes the Commission's finding on such facts conclusive.

In other cases this Court has recognized the zone of reasonableness and the wide range of discretion in the exercise of the power to prescribe reasonable rates. *United States* v. *Illinois Central R. R.*, 263 U. S. 515, 524; *American Express Co.* v. *Caldwell*, 244 U. S. 617, 624; *Northern Pacific Ry. Co.* v. *North Dakota*, 236 U. S. 585, 598–599; *Norfolk & Western Ry.* v. *West Virginia*, 236 U. S. 605, 608.

The broad discretion of the Commission in fixing rates is, of course, within the control of Congress. Section 15a is a prominent example of such congressional control. That section directs that the Commission, "in the exercise of its power to prescribe just and reasonable rates * * * shall initiate, modify, establish or adjust such rates so that carriers as a whole * * *" will earn a fair return. In pursuance of that section, the Commission pre-

scribed increases in rates ranging from 25 to 40 per cent.

Likewise, the Hoch-Smith Resolution controls the Commission's discretion to the extent that the resolution directs "the lowest possible lawful rates compatible with the maintenance of adequate transportation service." The direction of the Resolution is evidently, like that of Section 15a, to be carried out by the Commission in the exercise of its power to prescribe just and reasonable rates.

The Resolution, indeed, sets no new standard of lawfulness, since it did not contemplate that any rate should be fixed under it which would not have been a lawful rate under prior law. But it recognized that the fixation of any particular rate within the zone of lawfulness depended upon the relative weight which the Commission might give to the various factors which are normally considered in ratemaking. The Resolution recognizes, both as a legal and a factual possibility, that there may be a lowest possible lawful rate, and, conversely and necessarily, a highest possible lawful rate. The Resolution now directs the Commission to give such relative weight to the above-mentioned factors entering into the determination of a reasonable rate as will produce the lowest possible lawful rate compatible with the maintenance of adequate transportation service. By the Resolution the Commission is directed to prescribe rates on a level at which prior to the Resolution the Commission would have

been justified in fixing them, though not obliged to fix them.

Under the Interstate Commerce Act, as it existed prior to the passage of the Resolution, the Commission could lawfully have reached the same result, upon the same considerations, as it did in this case.

The principle of rate making that consideration should be given to the value of the commodity and what the traffic will bear finds ample recognition in decisions of the courts as well as of the Commission. In *Kansas City Southern Ry.* v. *Carl*, 227 U. S. 639, 650, this Court said:

> The right of the carrier to base rates upon value has been always regarded as just and reasonable. The principle that the compensation should bear a reasonable relation to the risk and responsibility assumed is the settled rule of the common law. Thus in *Gibbon* v. *Paynton*, 4 Burrows, 2298, it was said by Lord Mansfield (p. 2300): "His warranty and insurance is in respect of the reward he is to receive: and the reward ought to be proportionable to the risque." * * * This is an administrative principle in rate-making recognized as reasonable by the Interstate Commerce Commission, and is the basis upon which many tariffs filed with the Commission are made. *Matter of Released Rates*, 13 I. C. C. Rep. 550.

In one of the earliest cases decided by the Interstate Commerce Commission, *Imperial Coal Co.* v.

P. & L. E. R. R. Co., 2 I. C. C. 618, 636, it was held that:

> The value of the service is generally regarded as the most important factor in fixing rates. It furnishes theoretically, at least, a foundation for an equitable apportionment that takes into account all interests, those of the carriers, the owners of the property carried, and the public, as well as the dissimilarities of merchandise. * * * The value of the service to a shipper in a general sense is the ability to reach a market and make his commodity a subject of commerce.

The factor of the value of the commodity was emphasized in the following, among many other, decisions of the Commission: *In the Matter of Released Rates*, 13 I. C. C. 550, 560; *Metropolitan Paving Brick Co.* v. *Ann Arbor R. R. Co.*, 17 I. C. C. 197, 203; *Hafey* v. *St. L. & S. F. R. R. Co.*, 15 I. C. C. 245, 246; *Darling & Co.* v. *B. & O. R. R. Co.*, 15 I. C. C. 79, 81; *Investigation of Advances in Rates on Grain*, 21 I. C. C. 22, 35; *Advances in Rates—Western Case*, 20 I. C. C. 307, 355; *Lumber Rates from Memphis to New Orleans*, 27 I. C. C. 471, 480.

The underlying theory was clearly stated by Commissioner Lane in *Investigation and Suspension Docket 26*, 22 I. C. C. 604, 623, in which he pointed out that, in all classification, consideration must be given to the advantage to the community of having some kinds of freight carried at a less rate than other times:

And this is the true meaning of the phrase "what the traffic will bear." It expresses the consideration that must be shown by the traffic manager to the need of the people for certain commodities. He accordingly imposes a higher rate upon what may be termed luxuries as compared with that imposed upon those articles for which there is a more universal demand. He also gives consideration to the fact that the rate so imposed enters into the ultimate price to the consumer to but a small degree when the article is one of high value, and that those in the community who can afford to purchase such articles can well afford to pay a rate greater than that which could reasonably be imposed upon the general public for commodities of common use. In this sense what the traffic will bear and the value of the service are analogous. No one would claim that a carrier was violating its duty under the law in charging three times the rate upon oriental rugs that it imposed upon cotton. This would not be undue discrimination as between commodities, even though it costs no more to transport the rugs than it did the cotton, assuming both to be carried at the owner's risk, for the one does not compete with the other, and one may reasonably bear a higher rate than the other upon public grounds.

It is submitted that there is no basis in the record for appellants' assertion that the Commission construed the Resolution as authorizing it to reduce a

"reasonable" rate, or that it regarded the rates which it reduced by the order here involved as "reasonable."

The finding of Division 1 in the earlier proceeding certainly furnishes no foundation for this assertion. The merely negative finding therein (100 I. C. C. 108) that the "rates assailed are not unreasonable or prejudicial as alleged" was not one which would preclude the Division or the full Commission from later making a different finding. There would be no presumption that these rates, even though not unreasonable as of the date of the hearing of the earlier case in 1923, were not unreasonable as of the date of the filing of the new complaint in December, 1926, or the date of the hearing of that complaint in March, 1927. "Transportation conditions are not static." (*Skinner & Eddy Corp.* v. *United States,* 249 U. S. 557, 568.) In the hearing on the second complaint the case was tried *de novo,* and a more comprehensive showing was made. It was shown that important changes in conditions had taken place since the hearing in the prior case. These changes are summarized in the Commission's report. (R. 57–58.) Among them were the following: There had been a further increase in the volume of movement—an important element in rate-making—from a total of 69,777 cars in 1923 to 86,795 cars in 1925 and 78,803 cars in 1926. The financial condition of the carriers principally concerned had further improved. The depression in

the deciduous fruit industry had continued unabated for a further period of three years and conditions were worse in 1926 than in 1923; in the former decision Division 1 had found that the record did not justify the conclusion that the unfavorable financial conditions were likely to continue. In the later case the deciduous fruit growers offered to submit to an increase in the carload minimum weight on grapes from 26,000 pounds to 30,000 pounds.

Further, there was a much more comprehensive rate showing in the second hearing than in the first. Some of the additional evidence is: Comparison of the deciduous fruit rates assailed with the rate on bananas and cocoanuts from New Orleans and other Gulf ports to Portland, Oreg., Spokane and Seattle, Wash., Vancouver, B. C., and Los Angeles and San Francisco, Calif. (R. 32–33); with the rates on banasas from New Orleans and other Gulf ports to destinations in eastern trunk-line, central freight association, and western trunk-line territories (R. 33); with the rates on pineapples from Jacksonville, Fla., and the Gulf ports to Pacific Coast points (R. 33); with the rates on peaches and other deciduous fruits, concord grapes, cantaloupes, green vegetables, bananas and cocoanuts from various origins in the South and Southwest to destinations in eastern trunk-line, central, and western trunk-line territories. (See

the testimony of witness Ackerman, R. 243–280; 319–320, and his exhibits 62 to 101, inclusive.)

Certainly, the Commission made no finding in this case that the rate set aside was reasonable. Appellants' assertion that it was reasonable is a pure assumption.

While Section 1 of the Interstate Commerce Act provides that all rates "shall be just and reasonable," those terms are not defined in the Act, and there are no definite criteria provided therein by which the Commission may measure what is the reasonable rate upon a particular commodity. Congress conferred upon the Commission, its administrative agency, the legislative power to make rates for the future, and since no guide was given other than the general indefinite terms "just and reasonable," the discretion vested in the Commission is a broad one. Likewise, what is called the "zone of reasonableness" is wholly indefinite and may be regarded as simply expressive of the impossibility of exactitude in fixing particular rates. It is left to the Commission to determine, by the exercise of its expert and informed judgment, that which is not determinable by any mathematical or other definite formula. The question in each case in which an existing rate is assailed as unreasonable is whether that rate is too high according to all applicable legislative tests.

Apart from terminology, therefore, the question is what tests Congress has laid down for the deter-

mination of any particular rate. The Hoch-Smith Resolution was a part of the body of law under which in this case the Commission was acting. If the Commission correctly construed the Resolution as stating an additional test in accordance with which it should exercise its discretion in determining whether an existing rate on agricultural products should be reduced, it was warranted in finding that any rate which did not accord with that test was unreasonable and in setting it aside.

We submit that the Commission's finding that the rate here assailed was unreasonable, whether that finding be deemed to have been made under Section 1 of the Act alone or under the Act as supplemented by the Hoch-Smith Resolution, is entitled to the same sanction of conclusiveness as would have been a finding of unreasonableness in a nonagricultural case under the law as it existed prior to the Resolution.

In *Louisville & Nashville R. R. Co.* v. *Garrett*, 231 U. S. 298, this Court said (p. 313):

> The rate-making power necessarily implies a range of legislative discretion; and, so long as the legislative action is within its proper sphere, the courts are not entitled to interpose and upon their own investigation of traffic conditions and transportation problems to substitute their judgment with respect to the reasonableness of rates for that

> of the legislature or of the railroad commission exercising its delegated power. * * * The appropriate questions for the courts would be whether the Commission acted within the authority duly conferred by the legislature, and also, so far as the amount of compensation permitted by the prescribed rates is concerned, whether the Commission went beyond the domain of the State's legislative power and violated the constitutional rights of property by imposing confiscatory requirements.

There is nothing in the *Willamette Case* (*Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U. S. 433) or the *Passenger Scrip Case* (*United States* v. *New York Central R. R. Co.,* 263 U. S. 603) which is contrary to the Commission's conception of its power as exercised in this case.

In the *Willamette Case* there was no evidence whatever before the Commission to show that the existing rate was unreasonable, and, indeed, it was admitted by counsel for the shippers to be reasonable. The Commission set it aside for the avowed reason that, because the lumber industry had been built up upon the expectation of the continuance of a lower rate, which was admitted to be unreasonably low, the carriers should be deemed estopped from increasing it. That case was distinguished by this Court on the above ground in *Interstate Commerce*

Commission v. *Union Pacific R. R.*, 222 U. S. 541, 554. There the Court upheld an order of the Commission reducing the rate on lumber from the Pacific northwest to points in the middle west. The order was asserted to be void because "the Commission was influenced solely by a consideration of the effect of the advance in rates on the lumber industry." The Court said (p. 554):

> It is true, also, that the Commission examined into the effect of the old and the new rate on carrier and lumber men alike. But we do not find that it made the order because of the effect on the lumber industry. In the *Willamette Case* (219 U. S. 445), counsel for the mill men admitted that the rate there under attack was reasonable in and of itself, but insisted that statements of officers and action of the carrier operated to estop the road from raising a low rate up to a reasonable rate.

In the *Passenger Scrip Case* the Commission construed the amendment in question as necessarily requiring a reduced rate, whereas that statute actually required a determination of what was just and reasonable exactly as in any other case arising under the Act. The amendment in question did not, as does the Hoch-Smith Resolution, add anything to the preexisting law with respect to the determination of a reasonable rate.

We submit that the Commission properly construed the third paragraph of the Resolution as entering into the prescribed legislative standard for the determination of the reasonableness of rates on agricultural products suffering from depression and as meaning that a rate above the lowest possible lawful rate compatible with the maintenance of adequate transportation facilities must be deemed an unreasonable rate with respect to such commodities. The fact that Congress had not theretofore attempted to control the discretion of the Commission with respect to the weight to be accorded to the various factors which enter into the determination of the reasonableness of particular rates does not detract from the effect of such a direction when it was given.

Congress manifestly intended the Commission to apply the test which it formulated in the Resolution. As Congress did not alter the procedural provisions of the Interstate Commerce Act, it must be supposed to have intended that the application of the mandate of the Resolution should be through a finding that rates which did not accord with the test there laid down should be deemed unreasonable and set aside.

The appellants' construction of the Resolution (brief, pp. 61–64) would deprive the words "lowest possible lawful rates compatible with the maintenance of adequate transportation service" of any

substantial effect. Appellants construe the Resolution as if it stopped at the end of the second paragraph. That it did require a general comprehensive investigation of the entire rate structure of common carriers with a view to remedying defects and injustices in rates on all commodities is true. It is also true that in the course of that investigation agricultural products, among others, would be considered, and by the second paragraph the Commission was required "from time to time, and as expeditiously as possible," to make such decisions and orders as might be necessary or appropriate "in order to place the rates upon designated classes of traffic upon a just and reasonable basis with relation to other rates." If, as appellants contend, rates on agricultural products suffering from depression were to be determined by no different tests than they would have been under the Interstate Commerce Act apart from the Resolution, there was no need for Congress to go farther than the second paragraph. But Congress did go farther and prescribed a formula for the fixing of rates on agricultural products, "the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

Appellants' argument that the word "lawful" contemplates that no alteration of rates may be made pursuant to the Resolution which would not

have been made without it, is to cause that word to vitiate the effect of all the rest of the phrase. If Congress had intended what appellants conceive it did, the third paragraph would have been wholly unnecessary. But in the third paragraph Congress not only laid down a criterion, but in terms recognized that it had done so. In the proviso at the end of the paragraph Congress directs that the investigation contemplated by the Resolution shall not be permitted to delay the decision of pending cases involving rates on agricultural products *"and that such cases shall be decided in accordance with this resolution."* This language is utterly meaningless on any assumption other than that Congress had laid down a rule, in addition to the general rule embodied in the Interstate Commerce Act, in accordance with which particular pending cases involving agricultural products could and should be decided.

Much the same argument as to the Commission's misconstruction of the directions of Congress was made by the appellants in the *New England Divisions Case,* 261 U. S. 184. That was a proceeding by New England carriers to secure larger divisions of certain joint rates which had been increased by the Commission in a former proceeding. The Commission granted them increased divisions, which necessarily reduced the receipts of the western

lines. The Commission's order was based on Section 15 (6) of the Interstate Commerce Act, added by the Transportation Act of 1920, which empowered the Commission to prescribe "just, reasonable, and equitable divisions" of joint rates to be received by the several carriers, and then contained the following direction, which may be compared with that embodied in the Hoch-Smith Resolution.

> In so prescribing and determining the divisions of joint rates, fares and charges, the commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

This Court held that the Commission was justified in determining such divisions to consider the financial needs of particular carriers, in order to maintain them in effective operation as part of the trans-

portation system. This Court said (pp. 189, 193–195):

> *First.* It is contended that the order is void, because its purpose was not to establish divisions just, reasonable, and equitable, as between connecting carriers, but, in the public interest, to relieve the financial needs of the New England lines, so as to keep them in effective operation. The argument is that Congress did not authorize the Commission to exercise its power to accomplish that purpose. An order, regular on its face, may, of course, be set aside if made to accomplish a purpose not authorized. Compare *Southern Pacific Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, 443. But the order here assailed is not subject to that infirmity.
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> * * * * *
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> Plaintiffs insist that Transportation Act, 1920, did not, by its amendment of § 15 (6) change, or add to, the factors to be considered by the Commission in passing upon divisions; that it had, therefore, been the Commission's practice to consider all the factors enumerated in § 15 (6); that this enumeration merely put into statutory form the interpretation theretofore adopted; that the only new feature was the grant of authority to enter upon the enquiry into divisions on the Commission's initiative; that this authority was conferred in order to protect the short lines, which, because of their weakness, might refrain from making complaint,

for fear of giving offence; and that the power conferred upon the Commission is coextensive only with the duty imposed on the carriers by § 400 of Transportation Act, 1920, which declares that they shall establish "in case of joint rates * * * just, reasonable, and equitable divisions thereof as between the carriers subject to this Act participating therein which shall not unduly prefer or prejudice any of such participating carriers." * * * But Congress had, also, the broader purpose explained above. This is indicated, among other things, by expressions used in dealing with joint rates. By new § 15 (6), p. 486, the Commission is directed to give due consideration, in determining divisions, to "the importance to the public of the transportation services of such carriers"; just as by new § 15 (3), page 485, the Commission is authorized upon its own initiative when "desirable in the public interest" to establish joint rates and "the divisions of such rates."

THE LEGISLATIVE HISTORY OF THE RESOLUTION

The history of the Hoch-Smith Resolution tends to confirm, rather than to weaken, the Commission's construction.

Appellants' statement of the legislative history (Brief, pp. 53–61), as distinguished from their subsequent argumentative interpretation thereof (Brief, pp. 61–68), is substantially accurate, though

for completeness we set forth in the margin reference to the entire history.[1]

Brief reference may be made to the events leading up to the passage of the Resolution.

During the period of Federal control there had been a nation-wide increase of 25% in freight rates

[1] The following are complete references to the legislative history of the Resolution, the figures in italics being the page numbers of Vol. 65, Cong. Rec.:

346, H. J. Res. 94 introduced and referred to Committee on Interstate and Foreign Commerce; *1071*, H. J. Res. 141 introduced and referred to same committee; *4780*, S. J. Res. 107 introduced and referred to Committee on Interstate Commerce; *5120*, report of Committee on Interstate Commerce on S. J. Res. 107 submitted, Senate Report No. 313, 68th Cong., 1st Sess., Mar. 28, 1924; *8336–8337*, S. J. Res. 107 debated in Senate as in Committee of the Whole and passed; *8456*, S. J. Res. 107 received in House and referred to Committee on Interstate and Foreign Commerce; *8497*, report of Committee on Interstate and Foreign Commerce on H. J. Res. 141 submitted and referred to the Committee of the Whole House on the state of the Union, House Report No. 735, 68th Cong., 1st Sess., May 13, 1924; *9675*, report of Committee on Interstate and Foreign Commerce on S. J. Res. 107 submitted and referred to the Committee of the Whole House on the state of the Union, House Report No. 867, 68th Cong., 1st Sess., May 27, 1924; *11018–11026*, S. J. Res. 107 debated in House, and, as amended, passed; *11124*, Senate disagreed to House amendments of S. J. Res. 107 and conferees appointed; *11220*, House insisted on its amendments of S. J. Res. 107, and conferees appointed; *11245–11246*, Conference Report on S. J. Res. 107 debated in House and agreed to, House Report No. 1023, 68th Cong., 1st Sess., June 7, 1924; *66* Cong. Rec. *2501*, conference report on S. J. Res. 107 agreed to; *66* Cong. Rec. *2747*, S. J. Res. 107 approved by the President.

effective June 25, 1918, which followed a percentage increase of 5% in 1917, and a later percentage increase of 15% in the territory east of the Mississippi and north of the Ohio and Potomac rivers. (*Fifteen Percent Case*, 45 I. C. C. 303.) Later, on July 29, 1920, the Commission, pursuant to the Transportation Act of 1920, and especially to Section 15a thereof, authorized nation-wide increases in freight rates of 40% in the Eastern group, 35% in the Western group, 25% in the Southern and Mountain-Pacific groups, and 33⅓% in intergroup rates. (*Increased Rates, 1920,* 58 I. C. C. 220.)

It was early apparent that the above-mentioned flat horizontal increases in rates bore with peculiar severity on agricultural products, because their bulk was out of all proportion to their value.

In 1921 Congress created a Joint Commission of Agricultural Inquiry to investigate and report to Congress upon the causes of the condition of agriculture, the comparative condition of industries other than agriculture, and various other phases of the agricultural situation, including the marketing and transportation facilities of the country. (Senate Concurrent Res. 4, 42 Stat., Part 2, 1807.)

The report of the Joint Commission was submitted October 15, 1921, House Report 408, 67th Congress, 1st Session, in four parts, part 3 of which relates to transportation. The Joint Commission made the following recommendations, among others (Pt. 3, p. 3):

1. That the transportation rates on many commodities, more especially the products of agriculture, *bear a disproportionate relation to the prices of such commodities;*[1] that there should be immediate reductions in transportation rates applied to farm products and other basic commodities; and that reductions in rates upon the articles of *higher value,* or upon tonnage moving upon so-called "class rates," are not warranted, while the rates upon agricultural products and other basic commodities remain at their existing levels; that greater consideration should be given in the future by public rate-making authorities and by the railroads in the making of transportation rates *to the relative value of commodities* and existing and prospective economic conditions.

2. That the pyramided per cent advances in rates which have been authorized by the Interstate Commerce Commission or made by the United States Railroad Administration caused the dislocation of long-standing rate relationships between rates upon agricultural and industrial products between competitive enterprises and competitive sections of the country; that the railroads and the public rate-making bodies should seek to readjust rates of the country so as to preserve so far as practicable the general relationship of rates existing prior to 1918, with due regard to present and future changes in economic conditions.

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[1] All italics in this brief are ours unless otherwise stated.

> 3. That in establishing the general level of rates and commodity and class rates the Federal and State regulatory bodies give greater consideration to existing and prospective economic conditions and to the relationships existing between the *price level of commodities* and the *level of transportation rates* as well as the relationship existing between the price of different commodities, the weight of such commodities, and the space required for their transportation.

After the United States Chamber of Commerce had on November 14, 1923, made a report on the general subject (referred to in the Report of the House Committee on Interstate and Foreign Commerce, quoted in appellants' brief, p. 57), President Coolidge, in his message to Congress on December 6, 1923, said (p. 7):

> Competent authorities agree that an entire reorganization of the rate structure for freight is necessary. This should be ordered at once by the Congress.

From the historical background of the Resolution and its legislative history, as traced in appellants' brief, we submit that it is plain: (1) that the impetus for the Resolution was found in the maladjustment of the structure of freight rates due to unscientific horizontal increases; (2) that the purpose of the Resolution was to remedy defects in the rate structure so as to give due regard to the comparative levels of market values of different kinds

of commodities; and (3) that agricultural products, being conspicuous examples, known to Congress, both of the maladjustment of the existing structure and the necessity of a remedy, were made the subject of special directions by Congress to the Commission.

THE COMMISSION PROPERLY CONSTRUED THE RESOLUTION AS APPLICABLE TO PARTICULAR CASES INVOLVING AGRICULTURAL PRODUCTS

The appellants (Brief, pp. 128–131) contend that—

> The Commission misconstrued the Resolution in that it applied it in an isolated proceeding involving a rate on a particular commodity from a single state, while the Resolution is intended to be applied only in a general investigation into the general rate structure of the country.

The comprehensive and exhaustive character of that investigation, which the Commission instituted, on March 12, 1925, upon its own motion, docketed and entitled No. 17000, *Rate Structure Investigation,* appears in the Commission's Notice to the Public of March 12, 1925. (R. 518–522.)

In the Commission's 39th Annual Report to Congress (1925), under the heading "Hoch-Smith Resolution," pages 37 to 41, a full account is given of the action taken by the Commission in pursuance of the Resolution. It is stated that—

> The task assigned to us by the resolution is one of magnitude which will take time to complete (p. 41).

Full accounts of the progress made in the general investigation are given in subsequent annual reports to Congress, as follows: 40th Annual Report (1926), pages 36 to 41. 41st Annual Report (1927), pages 67 to 72. 42nd Annual Report (1928), pages 63 to 68.

The investigation has been divided into 11 parts, each part covering particular rates or classes of rates, part 2 covering western trunk-line rates; part 3, cotton; part 4, petroleum and petroleum products; part 5, furniture; part 6, iron and steel articles; part 7, grain and grain products from western territory; part 7-a, grain and grain products, southern territory rates; part 8, cottonseed, its products, and related articles; part 9, livestock; part 10, hay; part 11, sand and gravel. "The investigation will be extended to embrace other important commodities as rapidly as is possible with the appropriations and forces at our command." (1927 Ann. Rep., p. 72.)

> The Hoch-Smith resolution itself directs that our investigation shall be thorough and shall cover the entire rate structure of common carriers subject to the interstate commerce act. Such an investigation must inevitably consume a long period of time. *In fact, it must be continuous.* (1926 Ann. Rep., p. 38.)

In view of the magnitude of the undertaking and of the length of time which would necessarily be consumed in accomplishing it, it was not to be

supposed that Congress intended that relief, shown by a complainant in a formal complaint case to be due, should be withheld until the general investigation is completed. In July, 1926, the Commission, in the course of its report in *Revenues in Western District*, 113 I. C. C. 3, said (p. 36):

> Pending further progress in the investigation of the issues under No. 17000, parties are not debarred from what may prove to be the more expeditious and satisfactory course of presenting their grievances by complaint or of seeking the reconsideration of our former determinations which may control the situation.

That practice, which has been followed consistently ever since, does not appear to have been hitherto seriously questioned.

The proviso to the third paragraph of the Resolution expressly states:

> That no investigation or proceeding resulting from the adoption of this resolution shall be permitted to delay the decision of cases now pending before the commission involving rates on products of agriculture, and that such cases shall be decided in accordance with this resolution.

We submit that the intention of Congress was not that this proviso should be a limitation on the power of the Commission to apply the tests prescribed in the Resolution in particular cases, but was rather to make it plain that those tests were to be applied in pending proceedings although they

had been instituted prior to the adoption of the Resolution. In view of the direction of the third paragraph of the Resolution that the required changes in the rate structure with respect to agricultural products should be effected "with the least practicable delay," no sufficient reason appears for ascribing to Congress an intent that the Resolution, while applying to pending proceedings, should not apply to proceedings affecting such products which might be thereafter commenced before the comprehensive investigation provided by the second paragraph could be concluded.

THE COMMISSION HAS CONSTRUED THE RESOLUTION IN HARMONY WITH, AND NOT AS IMPLIEDLY REPEALING, SECTION 15a OF THE INTERSTATE COMMERCE ACT

Appellants' contention that the Commission construed the Resolution as in effect repealing Section 15a of the Interstate Commerce Act is quite without merit. There is nothing in its report which lends color to such an assertion. Instead, there are frequent references to the requirement of the Resolution that the rates fixed pursuant to its terms must be compatible with the maintenance of adequate transportation service.

The Commission in other cases had already held squarely that there was no such repeal and that the Resolution must be construed and applied in harmoney with Section 15a.

One of the earliest cases in which the Commission had occasion to consider the Hoch-Smith Res-

olution was *Revenues in the Western District,* 113 I. C. C. 3. Counsel for various State commissions and other State interests contended, *inter alia,* (1) that the Resolution had the effect of repealing Section 15a of the Interstate Commerce Act; and (2) that the rates on agricultural products, including livestock, effective at the time of the approval of the Resolution, became in effect the legislative maximum rates on those commodities which might not be increased except upon a finding by the Commission or by the courts that those rates are confiscatory.

In its report the Commission discussed the force of the qualifying words "compatible with the maintenance of adequate transportation service," as used in the Resolution. "These are expressions," the Commission said (p. 12), "somewhat similar to those used by the Supreme Court in decisions rendered prior to the adoption of the resolution, specifically referring to the provisions of section 15a wherein Congress indicated that in determining what would be a fair return consideration should be given, among other things, to the transportation needs of the country and the necessity of enlarging such facilities in order to provide the people with adequate transportation," citing *Wisconsin R. R. Comm.* v. *C., B. & Q. R. R. Co.,* 257 U. S. 563, 585; *New England Divisions Case,* 261 U. S. 184, 190; and *Dayton-Goose Creek Ry.* v. *United States,* 263 U. S. 456, 478.

The Commission further said (pp. 11–13):

> * * * we are of the view that we are not debarred by the resolution from affording the carriers relief through the medium of a general increase in rates prior to the completion of the investigation under that resolution, if need for such action arises upon a clear showing of necessity. Both section 15a and the resolution must be given a construction which makes them practicable and workable. See *New England Divisions Case*, 261 U. S. 184, 197.
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> With the contention that the resolution repeals section 15a we are not in accord. The resolution has the force and effect of an act of Congress. In it there is no specific repeal of any provision of existing law, and there is no reason for holding that the resolution by implication repealed or suspended the provisions of section 15a. * * *
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> * * * * * *
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> While confiscatory rates are unlawful, it does not follow that all rates which escape confiscation are lawful. As we construe the resolution, it does not prevent increases of rates on all livestock or on all products of agriculture which are above the point of confiscation.

Section 15a is itself subject to the following express proviso:

> *Provided*, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be un-

> just or unreasonable, and to prescribe different rates for different sections of the country.

The necessity for such an exception is apparent, for, in the absence of the power therein preserved, the Commission would be precluded from reducing any rate no matter how unreasonable or unjust it might be to the shipper, solely on the ground that the carrier was not earning a fair return from all of its rates. Since the carrier might never be able to earn such a fair return the shipper might be perpetually denied his right to a reasonable rate.

In *Dayton-Goose Creek Ry.* v. *United States,* 263 U. S. 456, this Court, speaking of Section 15a, said that, having regard to the property rights of the carriers and the interests of the shipping public, the validity of the plan embodied in that section depended upon two propositions, the first of which was (p. 480):

> Rates which as a body enable all the railroads necessary to do the business of a rate territory or section, to enjoy not more than a fair net operating income on the aggregate value of their properties therein economically and efficiently operated, are reasonable from the standpoint of the individual shipper in that section.

The Court then added:

> It should be noted that, in reaching a conclusion, upon this first proposition, we are only considering the general level of rates and their direct bearing upon the net return of the entire group. The statute does not

> require that the net return from all the rates shall affect the reasonableness of a particular rate or a class of rates. *In such an inquiry, the Commission may have regard to the service done, its intrinsic cost, or a comparison of it with other rates, and need not consider the total net return at all.*

Later in the opinion, p. 483, it was said:

> There is nothing in the act requiring the use of the net return as evidence to fix a particular rate. As we have already pointed out, paragraph 17, § 15a, gives fullest latitude for evidence on such an issue.

It follows that the Commission may reduce a particular rate or a class of rates which it finds to be unreasonable, and in making its determination need not consider the total net return at all.

THE COMMISSION GAVE NO UNDUE WEIGHT TO THE DEPRESSED CONDITION OF THE INDUSTRY

The Commission clearly did not construe the Resolution as authorizing it to reduce a rate "solely" or "merely" because of such depression, or because of the inability of the shippers to conduct their business at a profit, as appellants charge. (Brief, p. 143.)

The Commission did indeed give consideration to the economic condition of the industry. Its discussion of that subject in its report is found at pages 21–25 of the Record. This discussion would have been germane in any proceeding, and apart

from the Resolution, for it bears directly upon the value of the commodity and what the traffic will bear, which, as we have shown, has always been regarded as a legitimate subject of inquiry. Under the Resolution consideration of the economic condition of the industry was necessary to ascertain whether the facts brought the case within the application of the third paragraph thereof.

The Commission said (R. 21):

> The growing and shipping of deciduous fruits is one of the great basic industries of California, and as such is an important factor in the prosperity of the State *and of the carriers which serve it.*

Taking the Commission's report as a whole, we submit that it is clear that the Commission did not base its action solely on the depressed condition of the industry. That was only one of the matters considered along with a great many others. It was not error to give consideration to the economic or industrial conditions, along with the other evidence. *Interstate Commerce Commission* v. *Union Pacific R. R.*, 222 U. S. 541, 553–555; *Texas & Pacific Ry.* v. *Interstate Commerce Commission*, 162 U. S. 197, 219; *McLean Lumber Co.* v. *United States*, 237 Fed. 460, 470; *Southern Pac. Co.* v. *United States*, 197 Fed. 167 (second *Willamette Valley case* in which the Commission's order was sustained by the Commerce Court, no appeal being taken to this Court).

The position of the Commission with respect to the weight to be given, under the Resolution, to the

economic condition of the industry has been clear and consistent.

In *Revenues in Western District*, 113 I. C. C. 3, already referred to as one of the first cases under the Resolution, decided July 14, 1926, the Commission said (p. 30):

> In various cases since the postwar depression began we have had occasion to consider the economic condition of the agricultural and livestock industries. In *National Live Stock Shippers League* v. *A., & S. F. Ry. Co., supra* [63 I. C. C. 107], decided August 3, 1921, the record established that the livestock industry was in a serious condition. In *Rates on Grain, Grain Products, and Hay, supra* [64 I. C. C. 85], decided October 20, 1921, we found that the grain-farming industry was in a state of financial prostration. In *Reduced Rates, 1922, supra* [68 I. C. C. 676], decided May 16, 1922, we noted that the serious situation in agriculture obtaining in 1921 has improved. In *Rates and Charges on Grain and Grain Products, supra* [91 I. C. C. 105], decided July 10, 1924, we found that the agricultural industry, both in the western group and in the remainder of the country, was in a somewhat better economic condition, although still unsatisfactory, than in 1921. We said:
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> "In considering the reasonableness of rates the economic condition of an industry may be relevant as it bears on the value of the service to the industry, and as it may permanently or for a long period of time affect

> the ability of that industry to pay the rates assessed, *but taken by itself it can not be accepted as controlling.*

Decisions of the Commission in other cases decided after the passage of the Resolution further demonstrate that the Commission has not interpreted the Resolution as authorizing it to reduce rates solely on the ground of economic depression. In *Milk and Cream between New England Points,* 126 I. C. C. 38, it was shown that the dairying industry of New England was operating under depressed conditions. Nevertheless the Commission allowed the carriers to increase their rates on milk and cream. In *American National Livestock Asso.* v. *A., T. & S. F. Ry. Co.,* 122 I. C. C. 609, it was shown, as stated in the report, page 615, that "While the condition of the livestock industry has materially improved since the period of extreme depression the recovery has by no means been complete. The industry is still suffering from depression, although not in all branches and not in the same degree as heretofore * * *." Notwithstanding the depression the Commission declined to order reductions in many of the rates involved, although it did in some.

Other cases in which, although the Hoch-Smith Resolution was invoked, the Commission has found the rates assailed not unreasonable and has declined to reduce them are: *Cream and Related Articles,* 115 I. C. C. 447, 450; *Minnesota-Dakota Transit Millers* v. *A. A. R. R. Co.,* 118 I. C. C. 585, 596–597;

Unmanufactured Tobacco from Kentucky, 126 I. C. C. 93, 95; *Aberdeen Commercial Club* v. *Camas Prairie R. R. Co.*, 126 I. C. C. 498.

The Commission also discussed (R. 48–49) the evidence introduced by the appellants themselves in an attempt to show that a rate reduction would not afford permanent relief to the deciduous fruit industry. Evidence tending to show the effect of a rate reduction sought by shippers, or voluntarily made by a carrier, upon the industry in which the shipper is engaged, as well as evidence bearing upon the effect of the proposed reduction upon the finances of the carriers, is frequently introduced in rate hearings before the Commission. It is entirely proper that the Commission should consider such evidence; and it has never been held by this Court that to do so renders the Commission's orders invalid, so long as the Commission confines itself "to the exercise of its statutory powers to fix rates." *Interstate Commerce Commission* v. *Union Pacific R. R.*, 222 U. S. 541, 554; *Texas & Pacific Ry.* v. *Interstate Commerce Commission* (*Import Rate Case*), 162 U. S. 197, 219.

Appellants' assertion (Brief, p. 99) that "the Commission erroneously construed the provisions of the Resolution respecting 'freedom of movement by common carriers of the products of agriculture affected by that depression' to mean that notwithstanding a long, steady and 'enormous increase in the tonnage of such fruits' in interstate commerce,

freedom of movement did not exist unless the shippers were making a profit," is likewise unfounded. The passage of the report (R. 48) to which appellants refer (Brief, p. 104) is a discussion of the contentions of the opposing parties respecting the question of the freedom of movement.

The Hoch-Smith Resolution directs the Commission to effect such lawful rate changes *as will promote* the freedom of movement of the specified products at the lowest possible lawful rates compatible with the maintenance of adequate transportation service. Freedom of movement may be imperilled by high freight rates even though it has not yet ceased. The Commission found that the rates complained of were unreasonable to the extent that they exceeded the prescribed rates, and that the prescribed rates "are the lowest possible lawful rates compatible with the maintenance of adequate transportation service, and are necessary to promote the freedom of movement by defendants of the specified products of agriculture, now affected by existing depression in agriculture." (R. 59.) These findings were responsive to the directions of Congress.

THE COMMISSION DID NOT CONSTRUE THE RESOLUTION AS DIRECTING IT TO FIX RATES ONLY "SLIGHTLY IN EXCESS OF OPERATING EXPENSES"

It is repeatedly stated by appellants (Brief, pp. 36, 37, 43, 69, 70, 122, 123, 124, 173, 176, 187, 190), that "the Commission misconstrued the Resolution

in that it held that a rate which yielded the carrier an amount slightly above operating expenses was a lawful rate."

The quoted phrase "slightly in excess of operating expenses," which appellants reiterate in their brief, is taken from a sentence of the supplemental report of the Commission (R. 67), which reads in full as follows (R. 67):

> In other words, even if the cost study were accepted without question, it would indicate that the prescribed rates are slightly above the operating expenses and would confirm the impression obtained from comparisons with other rates that the new rates, while probably of less than average profitableness, would still leave the traffic attractive to the carriers.

Immediately following this sentence, however, the Commission says:

> But we have not accepted the cost study as indicating precisely the actual expense of handling this traffic.

And the Commission then proceeds to explain the reasons why it has not accepted the cost study. This quotation, therefore, is no foundation for appellants' contention that the rates prescribed by the order of the Commission were regarded by it as only "slightly above operating expenses."

Moreover, the Commission's conception of the scope of the phrase "operating expenses" is clearly shown by the fact that the Commission quoted with

approval (R. 26–27) from its former decisions, in *Grain and Grain Products,* 122 I. C. C. 235, 264, involving proposed increased rates on grain in the west, and in *American National Livestock Asso.* v. *A., T. & S. F. Ry. Co.,* 122 I. C. C. 609, 617, relating to the rates on livestock throughout the west. In the latter case the complainants contended that the logical basis for ascertaining the lowest possible lawful rates under the Hoch-Smith Resolution is the cost of the service and that the pre-war rates on livestock would yield a very substantial profit above the average unit costs of handling. "Apparently complainants assume that in any such computation of profit only expenses directly attributable to the traffic need be considered and that livestock need not contribute to such maintenance-of-way expenses as are occasioned by depreciation, decay, floods, or storms, or assist in defraying general expenses, taxes, or transportation expenses not incurred in a particular service." In reference to this contention, the Commission said (p. 617):

> The Hoch-Smith resolution, however, enjoined upon us to fix the lowest possible rates that might lawfully be required, compatible with the maintenance of adequate transportation service. It set no new standard of lawfulness, but said, in effect, that to the extent that there are flexible limits to our discretion we should fix the lowest rates falling within those limits. In the past we have had occasion to consider at times what may be called "out-of-pocket" cost, but while it

has been contended that the carriers might voluntarily, in certain situations, establish rates covering only such cost, it has never been seriously contended that we could lawfully require this to be done. Rates that we may lawfully require must in principle be high enough to cover all the cost that may fairly be allocated to the service plus at least some margin of profit. *Northern Pacific Ry.* v. *North Dakota,* 236 U. S. 585; *Norfolk & Western Ry.* v. *West Virginia,* 236 U. S. 605. We say "in principle" because only rarely is definite information available as to such cost, and in practice rates must often be fixed largely by comparison with other rates. Of course, the other sections of the interstate commerce act must also be borne in mind in determining the lowest lawful rates in a particular situation.

Practically the same language was used in the *Grain and Grain Products Case,* and in both cases the decisions of this Court in *Northern Pacific Ry. Co.* v. *North Dakota,* 236 U. S. 585, and *Norfolk & Western Ry.* v. *West Virginia,* 236 U. S. 605, were cited.

From this it is plain that the Commission in using the phrase "plus at least some margin of profit" did not mean a slight or unsubstantial profit, or profit less than a fair profit in all the circumstances, though the Commission recognized, as does this Court, that the ratemaking body has "a wide range of discretion in the exercise of the power to pre-

scribe reasonable charges, and it is not bound to fix uniform rates for all commodities or to secure the same percentage of profit on every sort of business." (263 U. S. pp. 598–599.) And it is likewise plain that by the phrase "all the costs that may fairly be allocated to the service" or the phrase "operating expenses," the Commission did not mean only "out-of-pocket" costs, but meant all the costs which the cited decisions of this Court require to be included.

II

The Hoch-Smith Resolution is a Valid Exercise of the Power of Congress to Regulate Commerce

THE RESOLUTION DOES NOT CONTEMPLATE CONFISCATORY RATES AND IS NOT OTHERWISE VIOLATIVE OF THE FIFTH AMENDMENT

The third paragraph of the Resolution directs the Commission to fix the "lowest possible *lawful* rates compatible with the maintenance of adequate transportation service."

In order to be "lawful," a rate must be nonconfiscatory. Where the question is as to an entire schedule of rates, the total revenue from all the rates must yield a fair return upon the reasonable value of the property of the carrier devoted to transportation service. *Smyth* v. *Ames*, 171 U. S. 361, 365; *Minnesota Rate Cases*, 230 U. S. 352, 434; *San Diego Land Co.* v. *National City*, 174 U. S. 739. But where, as in the case at bar, there is involved only the rate applicable to a part of the com-

pany's business, the rate must be high enough to cover all the cost of the service performed under it, including not only the expenditures incurred exclusively for that traffic—sometimes called the "direct" or "out-of-pocket" costs—but also a just proportion of the expenses incurred for all traffic of which that in question forms a part; and the rate must also allow a fair profit above such costs. *Banton* v. *Belt Line Ry.*, 268 U. S. 413, 421; *Northern Pacific Ry. Co.* v. *North Dakota*, 236 U. S. 585, 596–597; *Southern Ry. Co.* v. *St. Louis Hay Co.*, 214 U. S. 297, 301; *Norfolk & Western Ry.* v. *West Virginia*, 236 U. S. 605; *Northern Pacific Ry.* v. *Department of Public Works*, 268 U. S. 39. Compare *Dayton-Goose Creek Ry.* v. *United States*, 263 U. S. 456, 480–483; *Interstate Commerce Commission* v. *Union Pacific R. R.*, 222 U. S. 541, 549.

This test is implicit in the term "lawful rates" as used in the Hoch-Smith Resolution.

A constitutional argument quite analogous to that of the appellants herein was thus answered in the *New England Divisions Case, supra* (p. 195):

> *Second.* It is contended that if the act be construed as authorizing such apportionment of a joint rate on the basis of the greater needs of particular carriers it is unconstitutional. There is no claim that the apportionment results in confiscatory rates, nor is there in this record any basis for such a contention. The argument is that the division of a joint rate is essentially a partition of property; that the rate must be divided on the basis of the

services rendered by the several carriers; that there is no difference between taking part of one's just share of a joint rate and taking from a carrier part of the cash in its treasury; and, thus, that apportionment according to needs is a taking of property without due process. But the argument begs the question. What is its just share?—It is the amount properly apportioned out of the joint rate. That amount is to be determined, not by an agreement of the parties or by mileage. It is to be fixed by the Commission; fixed at what that board finds to be just, reasonable and equitable. Cost of the service is one of the elements in rate making. It may be just to give the prosperous carrier a smaller proportion of the increased rate than of the original rate. Whether the rate is reasonable may depend largely upon the disposition which is to be made of the revenues derived therefrom.

It has been repeatedly recognized in decisions of this Court that with respect to rates on particular commodities there is a wide field of legislative discretion which permits variety and classification. *Northern Pacific Ry.* v. *North Dakota,* 236 U. S. 585; *Norfolk & Western Ry.* v. *West Virginia,* 236 U. S. 605; *Vandalia R. R. Co.* v. *Schnull,* 255 U. S. 113; *Southern Pacific Co.* v. *Campbell,* 230 U. S. 537; *Atlantic Coast Line* v. *N. Car. Corp. Comm.,* 206 U. S. 1; *Minneapolis & St. Louis R. R. Co.* v. *Minnesota,* 186 U. S. 257.

As expressed by this Court in *Northern Pacific Ry.* v. *North Dakota, supra* (pp. 598–599):

> The legislature, undoubtedly, has a wide range of discretion in the exercise of the power to prescribe reasonable charges, and *it is not bound to fix uniform rates for all commodities or to secure the same percentage of profit on every sort of business.* There are many factors to be considered,—differences in the articles transported, the care required, the risk assumed, the value of the service, *and it is obviously important that there should be reasonable adjustments and classifications.* Nor is its authority hampered by the necessity of establishing such minute distinctions that the effective exercise of the rate-making power becomes impossible. It is not bound to prescribe separate rates for every individual service performed, but it may group services by fixing rates for classes of traffic.

In *Southern Pacific Co.* v. *Campbell, supra,* this Court said (p. 552):

> The conditions of traffic, the adjustment of rates with respect to the different commodities transported, and the appropriate basis for *classification,* were subjects for the consideration of the commission * * *.

Railroad freight rates from the beginning have been classified, rates on particular commodities being made lower than rates on other commodities depending upon the nature of the commodity, its

value, bulk, weight, and other elements; and there has been a wide range in the rates. An exhibit of record in the case at bar (Ex. 32, R. 238) shows the rates on 75 commodities from California to eastern points (admitted by the carriers to be a fair cross-section of the transcontinental rates), and they range from 74.5 cents per 100 pounds, applying on crushed or ground stone, to $2.70 per 100 pounds, applying on dry hides.

Even under the Fourteenth Amendment some special treatment of agriculture has been recognized as valid. *Liberty Warehouse Company* v. *Tobacco Growers.*, 276 U. S. 71, 96; *American Sugar Refining Co.* v. *Louisiana*, 179 U. S. 89, 95. The power of Congress under the Fifth Amendment "admits of the exercise of a wide discretion in classifying according to general, rather than minute, distinctions, and condemns what is done only when it is without any reasonable basis, and therefore is purely arbitrary." *Second Employers' Liability Cases*, 223 U. S. 1, 53.

In *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, in which the constitutionality of the "commodities clause" of the Act to Regulate Commerce (now Paragraph 8 of Section 1, Interstate Commerce Act) was sustained, it was contended that the statute was void because discriminatory, in that it exempted from its provisions "timber and the manufactured products thereof." The purpose of the exemption was primarily to make the clause

inapplicable to lumber tap lines in the south and southwest, owned or controlled by lumber companies. (See *Tap Line Cases*, 234 U. S. 1, 27.) The Court said (pp. 416, 417):

> Without elaborating, we hold the contention that the clause under consideration is void because of the exception as to timber, and the manufactured products thereof, is without merit. Deciding, as we do, that the clause, as construed, was a lawful exercise by Congress of the power to regulate commerce, *we know of no constitutional limitation requiring that such a regulation when adopted should be applied to all commodities alike.* It follows that even if we gave heed to the many reasons of expedience which have been suggested in argument against the exception and the injustice and favoritism which it is asserted will be operated thereby, that fact can have no weight in passing upon the question of power. And the same reasons also dispose of the contention that the clause is void as a *discrimination* between carriers.

If it be contended that the reduction of rates on agricultural products must necessarily result in increasing rates on other commodities above those which would otherwise obtain, it may be answered that this is but a normal incident of reasonable classification and it may also be questioned whether appellants have any standing to advance such an argument. As this Court said in *Dayton-Goose*

Creek Ry. v. *United States,* 263 U. S. 456, 484, upholding the constitutionality of the recapture provisions of the Transportation Act of 1920:

> It is then objected that the Government has no right to retain one-half of the excess, since, if it does not belong to the carrier, it belongs to the shippers and should be returned to them. If it were valid, it is an objection which the carrier can not be heard to make. It would be soon enough to consider such a claim when made by the shipper. But it is not valid.

See also *Southern Ry. Co.* v. *King,* 217 U. S. 524, 534; *Standard Stock Food Co.* v. *Wright,* 225 U. S. 540, 550; *Jeffrey Manufacturing Co.* v. *Blagg,* 235 U. S. 571, 576; *Liberty Warehouse Co.* v. *Tobacco Growers,* 276 U. S. 71, 88. With respect to the suggested danger of discrimination between particular commodities or localities, it has been shown that the Commission construes the Resolution as requiring rates not violative of any of the provisions of the Interstate Commerce Act. Inasmuch as Sections 2 and 3 of that Act prohibit *unjust* discrimination and *undue* and *unreasonable* preference or prejudice, it is not to be presumed that the Commission, in fixing rates in accordance with the directions of the Resolution, will prescribe unjustly discriminatory or unduly preferential or prejudicial rates.

It is submitted that appellants' constitutional argument based on the Fifth Amendment is not essentially different from that which inheres in

many ordinary rate cases. The Hoch-Smith Resolution, on its face, does not call for confiscatory rates. The Commission has not construed the Resolution as contemplating confiscation or an unsubstantial return. The argument to the contrary distorts the effect of isolated phrases in the report. The real complaint of the appellants is that the Commission has decided wrongly on the facts and that the rates prescribed in its report actually result in confiscation. That is a question which may arise in any case and with respect to which the report of the Commission is entitled to all the presumptions in favor of its validity that ordinarily attach to the conclusions of that body.

THE HOCH-SMITH RESOLUTION IS A VALID EXERCISE OF THE POWER TO REGULATE COMMERCE. IT IS NOT AN ATTEMPTED REGULATION OF INDUSTRY, AND DOES NOT GRANT "BOUNTIES," "SPECIAL PRIVILEGES," OR "SUBSIDIES"

Appellants argue that "the power of Congress under the commerce clause does not extend to the regulation of industrial conditions under the guise of regulating rates, and such power could not be delegated by Congress to the Commission." (Brief, p. 160.)

The Resolution, according to its title, is a direction to the Commission to "take action relative to adjustments in the rate structure of common carriers subject to the Interstate Commerce Act, and the fixing of rates and charges." It is a measure for the regulation of rates for transportation in interstate commerce, and that only.

The regulation of industry is one thing and the regulation of rates another, but here no attempt is made to regulate industry; the provision merely directs that industrial conditions shall be considered in regulating rates, and then only "in so far as it is legally possible to do so." The purpose of Congress, as shown by the Resolution itself, by the conditions which led to its passage, and by its legislative history, was to regulate rates and promote the free movement of commodities.

As stated in *Texas & Pacific Ry.* v. *Interstate Commerce Commission* (*Import Rate Case*), 162 U. S. 197, 219:

> Commerce, in its largest sense, must be deemed to be one of the most important subjects of legislation, and an intention to promote and facilitate it, and not to hamper or destroy it, is naturally to be attributed to Congress. The very terms of the statute, that charges must be *reasonable,* that discrimination must not be *unjust,* and that preference or advantage to any particular person, firm, corporation or locality must not be *undue* or *unreasonable,* necessarily imply that strict uniformity is not to be enforced; but that all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies, and of the producers, shippers and consumers, should be considered by a tribunal appointed to carry into effect and enforce the provisions of the act. (Italics the Court's.)

In the interests of maintaining a comprehensive transportation system, of which weak roads as well as strong ones were essential component parts, this Court has upheld the provisions of the Transportation Act of 1920 for the recapture of the excess income of the strong carriers and the devotion of a part of it to the financial needs of the weak ones (*Dayton-Goose Creek Ry. Co.* v. *United States, supra*) and divisions of joint rates among a group of carriers, with special reference to the financial necessities of a part of them, which gave the needy carriers a relatively greater share to meet those necessities than would have been justified by relative lengths of haul (*New England Divisions Case, supra*). But, of course, the adequate regulation of commerce looks farther than the railroads. Appellants' view is too narrow. The purpose of securing the free movement in commerce of necessities of life is surely not less germane to the exercise of the power to regulate commerce than the preservation of the railroad systems over which those commodities move.

No one would contend that Congress has the broad power to regulate industry as such, but that is a far different thing from considering the welfare of industry, the support of the carriers, in its relation to interstate freight rates. Carriers and industry are interdependent; if one suffers, eventually the other will also. In the determination of reasonable and nondiscriminatory rates, the welfare not only of the carriers but also of the producers, ship-

pers and consumers may be considered. *Texas & Pacific Ry.* v. *Interstate Commerce Commission*, 162 U. S. 197, 219.

A large part of appellants' argument against the constitutionality of the Resolution (Brief, pp. 143–172) is answered by the opinion in *Wilson* v. *New*, 243 U. S. 332, 358, 359, where the Court, speaking through Mr. Chief Justice White, said:

> When it is considered that no contention is made that in any view the enforcement of the act would result in confiscation, the misconception upon which all the propositions proceed becomes apparent. Indeed in seeking to test the arguments by which the propositions are sought to be supported we are of opinion that it is evident that in substance they assert not that no legislative judgment was exercised, but that in enacting the statute there was an unwise exertion of legislative power begotten either from some misconception or some mistaken economic view or partiality for the rights of one disputant over the other or some unstated motive which should not have been permitted to influence action. But to state such considerations is to state also the entire want of judicial power to consider them,—a view which therefore has excluded them absolutely from our mind and which impels us as a duty to say that we have not in the slightest degree passed upon them. While it is a truism to say that the duty to enforce the Constitution is paramount and abid-

ing, it is also true that the very highest of judicial duties is to give effect to the legislative will and in doing so to scrupulously abstain from permitting subjects which are exclusively within the field of legislative discretion to influence our opinion or to control judgment.

See also *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 405, 416.

Whether the Hoch-Smith Resolution is economically sound, whether it expresses a wise policy, whether it is efficacious to acomplish the purpose sought, whether it is expedient, whether it will result in inconvenience or harm, are all matters within the legislative discretion, and are wholly irrelevant in determining the question of the constitutional power of Congress to enact the Resolution.

III

The Reductions in Rates Ordered by the Commission Are Supported by Substantial Evidence and Are Not Shown to Be Confiscatory

If appellants have failed to demonstrate that the order of the Commission was based on a mistake of law or beyond the statutory or constitutional power of the Commission, it remains to consider if the appellants have established convincingly (1) that the rates fixed by the Commission in the order assailed are confiscatory, (2) that the Commission acted so arbitrarily and unjustly as to fix said rates without any evidence to support its action or di-

rectly contrary to the evidence before it, and (3) that the Commission exercised its authority in such an unreasonable manner that the order assailed should be held void. *Interstate Commerce Commission* v. *Union Pacific R. R.*, 222 U. S. 541, 547.

1. Upon the issue of confiscation, the appellants (complainants below) failed to meet the burden resting upon them in this suit "to establish the invalidating facts by definite and convincing proof." (*Allen* v. *St. Louis, Iron Mt. & Southern Ry.*, 230 U. S. 553, 560.) No evidence was presented in the court below except a certified copy of the proceedings before the Commission in which the order sought to be enjoined was made (R. 129) and three reports of the Commission in other cases (R. 514–523).

Upon this evidence, the court below (R. 100) found that "the contention that the reduced rate will compel the carriers to transport this class of freight at a loss, or without substantial reward, is without support in the record" (R. 100; 30 F. (2d) 940). That finding reinforces the Commission's order.

2. Did the Commission act so arbitrarily and unjustly as to fix the rates in question without evidence to support its action or directly contrary to the evidence before it?

The rule governing such a review is laid down in *Interstate Commerce Commission* v. *Union Pacific R. R.*, 222 U. S. 541, 547–548, as follows:

In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. "The findings of the Commission are made by law *prima facie* true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience." *Ill. Cent.* v. *I. C. C.*, 206 U. S. 441. Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof—but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order.

A bare summary of the evidence singled out for special mention in the Commission's report will indicate the comprehensiveness of this evidence. Among the matters considered in arriving at the rates here assailed were the following:

Volume of movement (R. 18-19),
Weighted average haul (R 20),
Value of the commodity, as indicated by market prices (R. 22-23),
Ratio of transportation charges to value of commodity (R. 24),
History of the rates (R. 28),

Comparative analysis of

(1) Rates on fruits and vegetables from California to eastern territories,

(2) Rates upon other perishable traffic in effect throughout the United States,

(3) General level of the deciduous fruit rates as compared with the level of other transcontinental rates (R. 29–31),

Comparative earnings (R. 32),

Comparison of relative rate levels, i. e., the relation of the deciduous fruit rates to the body of transcontinental rates eastbound and westbound (R. 36–38),

Average load of deciduous fruits (R. 39),

Movement of the fruits in trainload lots (R. 39),

Weather conditions during movement (R. 39),

Service performed by the carriers (R. 43),

Operating difficulties (R. 43),

Time schedules maintained by fruit trains (R. 44),

Empty return movement (R. 45),

Loss and damage claim payments (R. 46),

Service at terminals (R. 46),

Diversions and reconsignments (R. 47),

Cost of wages, supplies and repairs (R. 47–48),

Carriers' operating returns (R. 49–50),

Financial condition of the carriers (R. 51–53),

Cost of the service (R. 53–55).

We shall refer briefly to portions of the evidence to demonstrate that the charge that the Commission fixed the rates assailed without substantial evidence to support its order is baseless.

EVIDENCE BEARING ON THE REASONABLENESS OF THE RATES

1. *Rates on California deciduous fruits remained practically at their war-time peak while the rates on the great body of transcontinental traffic were reduced.*—The rates on deciduous fruits, like all other rates in the United States, were subjected to drastic increases as a result of war-time conditions, the history of which has been traced above.

The pre-war rate on deciduous fruit from California to the East was $1.15. (Ex. 28, R. 229–230.) This rate, established voluntarily by the carriers in 1911, remained in effect until June 25, 1918, when, as a result of the 25% increase, it became $1.44. On August 26, 1920, it was subjected to the horizontal increase of 33⅓% and became $1.92[1]—its "war-time peak." (R. 409–410.)

On July 1, 1922, pursuant to the nation-wide reduction of 10%, the California deciduous fruit rate was reduced from $1.92 to $1.73. This reduced rate was first established temporarily by the voluntary action of the carriers on January 1, 1922,

[1] This was the rate to all groups other than "J," which is here neglected because of the small volume of traffic to that group.

and after July 1, 1922, was continued without time limit. (R. 409–410.)

No further reduction was granted by the carriers in this rate and it was still in force at the time the complaint was filed with the Commission on December 27, 1926. So that it was then but 10% less than the war-time peak and was 50.4% higher than the pre-war rate of $1.15. (R. 237; Ex. 32, R. 238.)

Meanwhile the rates on the great body of transcontinental traffic had been reduced from the war-time peak. Beginning about January 1, 1922, there had taken place a gradual downward readjustment of the transcontinental rate structure. The rates on deciduous fruit did not share in this downward readjustment and as a result deciduous fruit rates were upon a higher level above the pre-war basis at the time the complaint was filed than were the rates upon the great body of transcontinental traffic. Proof of this was submitted by showing that upon 75 commodities moving eastbound and upon 65 commodities moving westbound, admitted by the carriers to represent a fair cross-section of the transcontinental traffic (R. 464, 467), the rates averaged 29% and 22% above the pre-war level. Import and export rates from and to Pacific coast ports exceeded the pre-war basis on an average of 41% and 18%, respectively. The rates on lumber from the Pacific coast moving transcontinentally exceeded the pre-war basis but 23%, and those on petroleum and its products but

25%. Fresh citrus fruits were only 35% higher. In *Express Rates 1922,* 83 I. C. C. 606, and 89 I. C. C. 297, the Commission found the carload express rates then in effect on fruits, berries, vegetables, butter, and eggs to be unreasonable and ordered them reduced. As a result of that order, the carload express rate on fruits and vegetables from the Pacific coast to New York and other points east of Chicago was only 27.6% above the pre-war level. If the deciduous fruit rates here involved had been reduced to reflect the same percentage over the pre-war basis, the $1.73 rate would have become $1.465. The Commission prescribed $1.60. (R. 238–241; Exs. 32 to 39; R. 462–468.) To recapitulate, these rate levels are set out in tabular form:

Percentage above pre-war basis[1]

Deciduous fruits	50.4
Fair cross section of transcontinental traffic:	
Eastbound (75 commodities)	29
Westbound (65 commodities)	22
Import rates from Pacific coast ports	41
Export rates to Pacific coast ports	18
Lumber	23
Petroleum and its products	25
Fresh citrus fruits	35
Express rates on fruits and vegetables	27.6

Thus, while all rates went up together and all reached their war-time peak, practically all have since come down materially except the deciduous

[1] Meaning the basis in effect immediately prior to the general 25% increase of June 25, 1918.

fruit rates, with the result that a disproportionate share of the transcontinental freight-rate burden was cast upon deciduous fruits. Complainants sought the same benefits for deciduous fruits that the carriers, in the exercise of their rate-making discretion, had granted to other transcontinental traffic quite generally.

These rates are not less a valid basis of comparison because voluntarily established by the carriers (*Interstate Commerce Commission* v. *Union Pacific R. R.*, 222 U. S. 541, 553; *Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557, 565), nor is the suggestion (appellants' brief, pp. 115–116; dissenting opinion of Commissioner McManamy, R. 62; see generally, as to water competition, R. 462–468) that some of these through rates may have been reduced to meet water competition through the Panama Canal, or otherwise, of weight. Certainly, it should not be contended that the complainants should be discriminated against in comparison with other transcontinental railroad rates because the commodities which they shipped were perishable and therefore could not be transported by water. (*Cf. Virginian Ry.* v. *United States*, 272 U. S. 658, 665.)

2. *The rates on deciduous fruits were higher than the rates generally prevailing on other fruits and vegetables moving transcontinentally from California.*—A comparison of the deciduous fruit rates in issue with the rates on the other principal

fruits and vegetables that move from California to the East showed that generally speaking the rates on the deciduous fruits were the highest. For instance, the $1.73 rate on deciduous fruits to the eastern groups was 18 cents per 100 pounds higher than the rate on oranges to the same destination groups and 23 cents per 100 pounds higher than the rates on lemons and apples to the same groups. (R. 230–231; Ex. 29.)

The deciduous fruit rates in issue were also generally higher on the average than the transcontinental rates on melons, cantaloupes, and vegetables. The differences are shown in the following tabulation (Ex. 29):

	From California points to groups					
	A	B	C	D–E	F–G–H	J
Melons, Cantaloupes, Vegetables (in packages)	175	173	165	146	139	134
Deciduous fruits	173	173	173	173	173	162

There was an even greater disparity as between the rates on deciduous fruits and those on vegetables in bags and fresh cabbage in crates. The deciduous fruit rates exceeded these latter rates in the following amounts (Ex. 29):

	Cents
To Group A	22
To Group B	37.5
To Group C	45
To Groups D and E	63
To Groups F, G, and H	63
To Group J	56

There were also comparisons as between deciduous fruits and other fruits and vegetables in respect of the revenue on the per car, per car-mile, per net ton-mile, and per gross ton-mile bases, calculated upon the average weighted haul. (Ex. 30, R. 232; R. 230–231; R. 411–413; Ex. 166, R. 412.) These comparisons are set out in tabular form in the Commission's report (R. 31) and need not be reproduced here. As stated in the report, the earnings per car on deciduous fruits were higher than on lemons and were materially higher than on fresh vegetables and cantaloupes. They were lower than on apples and citrus fruits, but considering the length of the haul, the net ton-mile earnings on deciduous fruits were relatively higher than on all the other commodities, while the car-mile and gross ton-mile earnings were higher in some instances and lower in others. (R. 32.)

3. *The rates on deciduous fruits from California yielded greater revenue than the rates on other comparative traffic for similar hauls in other sections of the United States.*—Comparisons of the deciduous fruit rates in issue with the rate on bananas and cocoanuts from New Orleans and other Gulf ports to Portland, Oreg., Spokane and Seattle, Wash., Vancouver, B. C., and Los Angeles and San Francisco, Calif., an average distance of 2,964.8 miles (R. 250), which is about the same as the weighted average haul of California's deciduous fruits in 1926 (2,970 miles (Ex. 166, R.

412)), showed that while the rate on the latter commodities was somewhat higher, the per car revenue was substantially lower, being $360.02 per car (Ex. 64, R. 250) as against $489.42 per car on deciduous fruits (Ex. 166, R. 412).

A summary of 171 rates on bananas from New Orleans and other Gulf ports to destinations in eastern trunk-line, central freight association, western trunk-line, and transcontinental territories, applying for an average distance of 2,525 miles, showed that the average earnings per car and per gross ton-mile were lower than the average under the deciduous fruit rates assailed. (Ex. 65, R. 251.)

Similar comparisons showed that the rates on pineapples from Gulf ports to Pacific coast points, an average distance of 2,938 miles, yielded average earnings, after deducting terminal expenses absorbed by the carriers, of $461.40 per car (Ex. 66, R. 251–252), as against $489.42 (Ex. 166, R. 412) yielded by the deciduous fruit rates in issue.

4. *The deciduous fruit traffic moves in tremendous volume.*—As stated in the Commission's report, "volume of movement is an important factor in testing the reasonableness of a rate." (R. 38.) In 1926, the movement to groups A to M, except J, amounted to 1,044,969 tons. This vast tonnage moved in 74,456 cars made up as follows: Grapes, 58,334; pears, 9,523; plums, 4,741; peaches, 1,093; and miscellaneous, 765. The movement to group J amounted in 1926 to 8,768 tons, or 627 cars. (Ex. 166, R. 412.)

In 1916 the total carload shipments of deciduous fruits from California to interstate destinations amounted to 17,891 cars. In 1925 the shipments approximated nearly five times that number, 86,795 cars. (R. 223.) In 1926 the movement was 78,803 cars. (R. 223.) The movement of deciduous fruits begins in June and continues in substantial quantities until December. From June 15 to November 20, 1926, there were only nine days upon which less than 100 cars of deciduous fruit originated on the Southern Pacific and the Western Pacific for eastbound movement. (R. 38.) While in many instances reconsignments necessitate taking some of the cars out of the train en route, nevertheless many of the trains go through solid. (R. 39.) This is a factor which has a decided bearing upon the reasonableness of the rates, for, as stated by the Commission in *Cattle Raisers' Asso.* v. *Missouri, K. C. T. R. Co.*, 11 I. C. C. 296, 335:

> No one thing so contributes to reducing the cost of movement as the ability to handle traffic long distances in solid trains.

5. *Fruit prices have been deflated while freight rates on fruit have remained inflated.*—While deciduous fruit prices were generally inflated during and following the period of the World War, freight rates likewise reached their peak at about the same time. Freight rates on deciduous fruits did not change in the face of changed conditions in the deciduous fruit industry. The challenged rates on deciduous fruits were but 10% less than the war-

time peak (Ex. 28, R. 230), while the price levels of all deciduous fruits had been deflated to a point where the weighted average prices in 1926 were less than 57% of the peak prices received in 1920. For example, the average price in 1917 of apricots, grapes, peaches, pears, and plums was $5.43 per 100 pounds; in 1920, it was $9.97 per 100 pounds; 1926, $5.62 per 100 pounds. *Compared with 1917 prices, those in 1926 were but 3.5% higher, while the freight rates were still 50.4% above the 1917 level.* (Exs. 24 and 25, R. 226, 228.)

In 1920, transportation and refrigeration charges constituted 18.8 per cent of the price received for the fruits in eastern markets; in 1925 this percentage had grown to 35. (Exs. 26 and 27, R. 228.)

Summary.—A very full and complete record was developed which disclosed with unusual thoroughness the facts and circumstances which a rate-making body would need to consider in fixing rates upon the traffic, including virtually all conceivable elements of rate making. It is believed that the evidence establishing the five facts referred to above alone is sufficient to support the Commission's order. That the evidence did tend to establish these facts is not denied.

Indeed, the evidence before the Commission in this case would, it is believed, have fully sustained a reduction of rates under Section 1 of the Interstate Commerce Act, even apart from the Hoch-Smith Resolution.

There was in this mass of facts that out of which experts could have named a rate. The law makes the Commission's finding on such facts conclusive. (*Interstate Commerce Commission* v. *Union Pacific R. R., supra,* page 550.)

THE INCREASE IN THE CARLOAD MINIMUM WEIGHT ON GRAPES HAS AN IMPORTANT BEARING UPON THE MATTER OF THE REASONABLENESS OF THE RATES AND THE CARRIERS' REVENUES THEREUNDER.

It is a practice as old as railroading to make a difference in the charges depending upon the quantity offered for shipment. At an early date the Commission approved carload rates lower than less-than-carload rates on the same goods between the same points. *Thurber* v. *N. Y. C. & H. R. R. Co.,* 3 I. C. C. 473. The minimum quantity to which the carload rate will be applied (the carload minimum weight)[1] fixes the carriers' minimum earnings under the carload rate, and, as the Commission has often pointed out, the minimum weight applying in connection with a carload rate is not merely something affecting the rate, but is in fact a part of the rate, a factor which is just as essential to a correct statement of the rate as is the rate per 100 pounds itself. *Rail & River Coal Co.* v. *B. & O. R. R.,* 14 I. C. C. 86, 90; *Sunderland Bros.* v. *St. L. & S. F. R. R. Co.,* 23 I. C. C. 259, 261.

The rates which the Commission found to be unreasonable in the case at bar were $1.62 to Group J,

[1] Cf. *Ex Parte Young* 209 U. S. 123, 128.

and $1.73 to the other groups. These were carload rates (no less-than-carload rates were involved), and applied to all deciduous fruits. The carload minimum weight applying in connection with both of those rates was 26,000 pounds. The reduced rates prescribed by the Commission are $1.50 to Group J and $1.60 to the other groups. In connection with both of these rates the minimum of 26,000 pounds continues to apply to all the deciduous fruits except *grapes,* as to which the minimum is 30,000 pounds.

Neglecting Group J, let us compare the old rate of $1.73, minimum 26,000 pounds, with the prescribed rate of $1.60, minimum 30,000 pounds, to the other groups, on shipments of grapes, which constitute at least 75 per cent of the traffic. (R. 23.) The *minimum carload revenue* under the old rate ($1.73 per 100 pounds x 26,000 pounds) was $449.80. Under the prescribed rate the minimum carload revenue is $480 ($1.60 per 100 pounds x 30,000 pounds). Thus, the smallest amount which the carriers can collect under the prescribed rate on grapes is $480, whereas under the old rate the amount might have been as low as $449.80, or $30.20 less than under the new basis prescribed by the Commission.

During the year 1926 when the minimum of 26,000 was in effect the average weight of all grapes shipped was 28,840 pounds, and the average revenue on grapes was $498.69. Since 28,840 pounds was the *average,* and since the minimum then applicable

was 26,000 pounds, it is reasonable to suppose that some carloads were shipped which weighed only 26,000 pounds, and such the carriers must have transported for a revenue as low as $449.80. But under the reduced rate of $1.60, minimum 30,000 pounds, the carriers will never be called upon to transport a carload shipment of grapes for less than $480.

Economies in operation will be effected as a result of the higher minimum on grapes. A substantial saving in equipment will necessarily result. It will reduce track and terminal congestion, it will enable the same group of employees to handle a greater tonnage, it will result in fewer refrigerator cars being built, it will effect a reduction in the maintenance charge of cars and decrease the number of cars returned empty.

These considerations are fully recognized in decisions of the Commission. *Transportation of Wool, Hides, and Pelts,* 23 I. C. C. 151, 167; *1915 Western Advance Rate Case,* 35 I. C. C. 497, 575; *Minimum Weights on Iron and Steel Articles,* 101 I. C. C. 3, 6; *Lumber Carload Minima,* 68 I. C. C. 98, 106; *Minimum Carload Weight on Hogs,* 81 I. C. C. 373, 379.

In the well known *Lemon Case* (*Arlington Heights Fruit Exchange* v. *Southern Pac. Co.*), 22 I. C. C. 149, in which the Commission reduced the transcontinental rate on lemons from $1.15 to $1.00, its order being upheld by the Commerce Court and

this Court, 203 Fed. 56, and 231 U. S. 736, the Commission said (p. 154):

> There can be little doubt that from a purely transportation standpoint, having reference mainly to the cost of the service, a $1 rate with a minimum of 34,000 pounds is better business than a minimum of 26,200 pounds at a rate of $1.15.

THE COMMISSION GAVE CONSIDERATION TO THE REQUIREMENTS OF THE RESOLUTION THAT THE RATES SHOULD BE COMPATIBLE WITH THE MAINTENANCE OF ADEQUATE TRANSPORTATION SERVICE

The Commission's statement in its report (R. 56), "It seems clear that the reduction requested, if granted, would not affect the maintenance of adequate transportation service," was reached after consideration of all relevant facts, and especially evidence showing the operating returns of the carriers and their general financial condition.

The evidence showed, as pointed out in the report (R. 49), that "the operating returns of most of the principal carriers engaged in handling this traffic have increased in a marked degree during the last few years." A table, compiled from exhibits of record (Ex. 40, R. 242), and reproduced in the report (R. 50), compared the 1926 net railway operating income of ten of the principal systems that handle deciduous fruits with the average net incomes of the same carriers during the 12-year period 1914 to 1925, and showed the percentage increase, 1926 over 1914. For instance, in the case of the South-

ern Pacific, which carries a greater tonnage of the deciduous fruit traffic than any other carrier (R. 19), its average annual income for the 12-year period was $36,574,064, while its income in 1926 was $48,128,841, an increase in 1926 of 31.59 per cent over the 12-year average, and 46.50 per cent over the year 1914. The table referred to is here reproduced:

	Income average 12-year period	Income, 1926	Percentage increase, 1926 over average	Percentage increase, 1926 over 1914
Southern Pacific	$36,574,064	$48,128,841	31.59	46.50
Santa Fe	38,185,732	55,498,700	45.44	89.66
Western Pacific	2,305,033	4,337,205	81.09	1,191.33
Union Pacific	27,509,076	27,853,065	1.25	46.49
North Western	15,934,401	22,295,139	39.92	17.26
Milwaukee	14,497,122	18,394,023	26.90	[1] 30.28
Pennsylvania	48,044,313	106,432,758	121.53	128.39
New York Central	49,144,839	72,181,053	46.77	207.22
Erie	7,813,098	18,062,723	131.09	43.08
Baltimore & Ohio	22,014,068	50,805,337	130.79	183.71

[1] Decrease.

Comparison of the net operating incomes of these ten roads for 1926 with a year when rate levels were at their peak—1921—showed that in each instance the 1926 income was substantially higher than in 1921, with the single exception of the Union Pacific. (R. 51.)

A consolidated statement showed that railway operating revenues of the four principal carriers that serve California—the Southern Pacific (Pacific System), the Santa Fe, the Western Pacific, and the Los Angeles & Salt Lake—had advanced from $421,498,800 in 1921 to $473,422,000 in 1926, an in-

crease of $51,923,200. But railway operating expenses remained about the same, being $321,341,884 in 1921 and $322,595,028 in 1926, an increase of but $1,253,144. Net railway operating income was $70,298,291 in 1921 as compared with $110,520,485 in 1926, an increase of $40,222,194. (R. 51; Ex. 53, R. 243.)

The defendant carriers showed that the rates of return on the property investments of some of the principal carriers for the years ending December 31, 1925 and 1926, were as follows (R. 52):

	1925	1926
	Per cent	Per cent
Southern Pacific lines	3.70	[1] 3.92
Santa Fe system	5.53	6.86
Western Pacific	3.66	3.64
Union Pacific system	4.76	4.87
North Western	4.10	4.25
Milwaukee	2.26	2.46
Illinois Central system	4.86	4.30
Erie system	3.37	3.43
Pennsylvania system	4.80	4.65
Baltimore & Ohio	5.33	6.03
New York Central lines	5.17	5.29

[1] Pacific lines, 4.04 per cent.

Commenting upon this showing the Commission said (R. 53):

> The Santa Fe and the Baltimore & Ohio are the only carriers shown as having earned in excess of 5.75 per cent in 1926. For 18 principal carriers in the western district, including the Illinois Central system, the average return in 1926 was 4.43 per cent and for five principal carriers in the eastern district 4.9 per cent.

The Commission added, significantly,

> All the foregoing rates of return are computed with relation to the property investment accounts.

In other words, they are not based upon the values of their properties as determined by the Commission in pursuance of Section 19a of the Act, but according to the book values. In weighing the evidence in the light of its own knowledge and experience, the Commission could, of course, give consideration to the fact that the book values might be very different from the actual values. Compare *Increased Rates 1920,* 58 I. C. C. 220, 227–230, under the heading "Property Investment;" *United States* v. *Los Angeles & Salt Lake R. R. Co.,* 273 U. S. 299, 304.

In the light of the above evidence, considered in connection with various other facts and circumstances disclosed by the record, the Commission could conclude, as it did, that the slight rate reduction which it here ordered, coupled with the simultaneous increase in the carload minimum weight on grapes from 26,000 to 30,000 pounds, "would not affect the maintenance of adequate transportation service" (R. 56), and that the reduced rates prescribed would be "compatible with the maintenance of adequate transportation service" (R. 59).

THERE WAS NO SUBSTANTIAL EVIDENCE THAT RATES PRESCRIBED WOULD BE CONFISCATORY

The appellants' contention that the record before the Commission shows that the rates assailed are

confiscatory is based largely on the charge that the Commission did not give proper weight to the "cost study" offered in evidence by the carriers.

The "cost study" referred to is an exhibit (No. 252, R. 482) which purported to show the average operating expense involved in transporting a car of grapes over the Santa Fe from Bakersfield to Chicago, a distance of 2,331 miles, including the cost of assembling such cars at Bakersfield and the return-empty movement. The exhibit consisted of but a single sheet, and purported to show, for each division of the Santa Fe, the average cost per car per mile, and then, by multiplying that cost by the number of miles on each division, the total expense on each division for one car. Then the total expenses on the several divisions are added up, and the total so arrived at, plus terminal expenses at Kansas City and Chicago, plus an amount representing loss and damage, minus an item relating to refrigeration (which is covered by the separate refrigeration charge), is given as the total expense per car.

That expense is shown as $350.23. "From this amount counsel for defendants indicated that it would be proper to deduct $5 per car for cost of repairs to refrigeration devices, and $4 per car for supervision, leaving the net operating expense $341.23 per car, equivalent to 14.64 cents per car-mile." (Commission's Report, R. 53.)

No supporting data of any kind was given. No details were given which would permit a check. Witness Conrad in his oral testimony very briefly stated the general methods he used, but he did not give the component figures.

Such an unsupported assertion as to the cost of the service can not be accepted as the clear and definite proof that the law requires.

Further, the great bulk of the expenses assigned consisted of estimates.

The only costs which were assigned to these trains on an actual basis were the wages of the train and enginemen, quantities of fuel used, and switching costs. (R. 476.) The witness said (R. 476):

> The others are *unallocatable* expenses, and they were assigned to these trains on a unit-cost basis. In such assignments there were only the main-line costs considered.

From an exhibit (R. 489) submitted, under stipulation of the parties (R. 488), after the close of the hearing, it was ascertained that the total direct cost for train and enginemen's wages, and fuel, inclusive of the return-empty-car haul, was $3,076.26 per train ($1,162.40 for the wages and $1,913.86 for the fuel, Ex. R. 489), or $55.92 per car, assuming a train of 55 cars.

All of the alleged cost of $341.23, other than this $55.92 for wages and fuel, was made up of "unallocatable expenses" which were estimates. There is no basis for a determination whether these estimates were correct.

Necessarily, many of the estimates made do not represent actual costs but only estimates of the *average costs* on all traffic. This is admittedly so as to the costs on the Valley Division, which included even dead freight, and all local freight, carload and less than carload. (R. 484.) Those costs are shown by Exhibit 252 to be 35.85 cents per car-mile, the highest cost on any division and more than double that on the next highest, and about three times that on most of the other divisions. The estimate as to the Valley Division must therefore be rejected under the authority of *Northern Pacific Ry.* v. *Department of Public Works,* 268 U. S. 39, 43–44.

Even if this cost study proved with the definiteness and certainty which the law requires in confiscation cases what it purports to show, viz, the cost to the Santa Fe of transporting over its line a car of grapes from an originating point in California to Chicago in September, 1923, still it would have to be rejected as falling far short of proving confiscation in this case, for the following reasons:

(1) Although the Commission's order is directed to several hundred railroads, the exhibit admittedly attempts to show the costs on only one railroad, namely, the Santa Fe. No effort whatever was made to show the costs of transporting deciduous fruit on the numerous other roads which carry this traffic. The *only* evidence as to the other roads consists of an assertion by witness Conrad that he did not think the traffic could be handled as cheaply by

combination lines as it was handled by the Santa Fe. (R. 481–482.) Compare *Dayton-Goose Creek Ry.* v. *United States,* 263 U. S. 456, 482; *Minnesota Rate Cases,* 230 U. S. 352, 469, 473.

(2) The exhibit purports to cover only one of the deciduous fruits here involved, viz, grapes.

(3) Although it is not asserted that the prescribed rate of $1.60 as applied to shipments to *Chicago,* 2,331 miles, is confiscatory, but only as applied to the *average weighted haul* of 2,970 miles, which would be a point 639 miles east of Chicago, the cost of the service east of Chicago is not shown, and it is inferred that the average cost per mile east of Chicago on any railroad which handles the traffic is precisely the same as the average cost per mile on the Santa Fe west of Chicago. (Compare *St. Louis & San Francisco Ry.* v. *Gill,* 156 U. S. 649.)

(4) No attempt was made to show the average costs over a considerable period of time, but admittedly the cost figures presented were arrived at by investigation of the costs during one month only. The month selected was September in the year 1923. The exhibit was submitted at the hearing held in March, 1927. Speculations, opinions and inferences only were offered in support of the proposition that the costs were no lower in 1927 than in 1923.

The language of Mr. Justice Moody in *Knoxville* v. *Knoxville Water Co.,* 212 U. S. 1, 17–18, is apposite.

Where the case rests, as it does here, not upon observation of the actual operation under the ordinance, but upon *speculation* as to its effect, based upon the operations of a prior fiscal year, we will not *guess* whether the substantial return certain to be earned would lack something of the return which would save the effect of the ordinance from confiscation. *It is enough that the whole case leaves us in grave doubt.*

CONCLUSION

The decree of the court below dismissing the bills for want of equity should be affirmed.

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OCTOBER, 1929.

APPENDIX

U. S. GOVERNMENT PRINTING OFFICE: 1929

SUPREME COURT OF THE UNITED STATES.

No. 7.—October Term, 1929.

Ann Arbor Railroad Company, et al., Appellants,
vs.
The United States of America, Interstate Commerce Commission and California Growers' & Shippers' Protective League.

Appeal from the District Court of the United States for the Northern District of California.

[June 2, 1930.]

Mr. Justice Van Devanter delivered the opinion of the Court.

This is a suit to set aside an order of the Interstate Commerce Commission condemning existing rates for the transportation of deciduous fruits from California to eastern destinations—chiefly points between the Mississippi River and the Atlantic seaboard. A hearing in the District Court before three judges under § 47, Title 28, U. S. C., resulted in a decree dismissing the bill; and a direct appeal has brought the case here.

The proceeding which resulted in the order was instituted before the commission December 27, 1926, by the California Growers' and Shippers' Protective League through a complaint assailing the existing rates as unjust and unreasonable under § 1 of the Interstate Commerce Act, unduly and unreasonably preferential under § 3 of that act, and having an unjust and unreasonable basis and being too high within the meaning of the joint resolution of Congress of January 30, 1925, known as the Hoch-Smith Resolution. The order was made July 20, 1927, and was changed by the commission in some particulars November 14 of that year. Originally it was to be effective October 10, 1927, but the Commission extended the time to January 10, 1928.

The plaintiffs in the suit are the railroad companies which participate in the transportation. In their bill and on this appeal they challenge the validity of the order upon the ground, among others, that the Commission based it upon the joint resolution and a construction thereof which is inadmissible.

The Interstate Commerce Act, Title 49, U. S. C., provides in §§ 1, 3 and 15—

Sec. 1, par. (5) All charges . . . shall be just and reasonable, and every unjust and unreasonable charge . . . is prohibited and declared to be unlawful: . . . .

Sec. 3, par. (1) It shall be unlawful . . . to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Sec. 15, par. (1) Whenever, after full hearing, upon a complaint . . . or . . . under an order for investigation and hearing made by the commission on its own initiative, . . . the commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever . . . is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial . . . the commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case . . . .

The joint resolution, c. 120, 43 Stat. 801, reads:

"That it is hereby declared to be the true policy in rate making to be pursued by the Interstate Commerce Commission in adjusting freight rates, that the conditions which at any given time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move.

"That the Interstate Commerce Commission is authorized and directed to make a thorough investigation of the rate structure of common carriers subject to the interstate commerce act, in order to determine to what extent and in what manner existing rates and charges may be unjust, unreasonable, unjustly discriminatory, or unduly preferential, thereby imposing undue burdens, or giving undue advantage as between the various localities and parts of the country, the various classes of traffic, and the various classes and kinds of commodities, and to make, in accordance with law, such changes, adjustments, and redistribution of rates and charges as may be found necessary to correct any defects so found to exist. In making any such change, adjustment, or redistribution the commission shall give due regard, among other factors, to the general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years, to a natural and proper development of the country as a whole, and to the maintenance of an adequate system of transportation. In the

progress of such investigation the commission shall, from time to time, and as expeditiously as possible, make such decisions and orders as it may find to be necessary or appropriate upon the record then made in order to place the rates upon designated classes of traffic upon a just and reasonable basis with relation to other rates. Such investigation shall be conducted with due regard to other investigations or proceedings affecting rate adjustments which may be pending before the commission.

"In view of the existing depression in agriculture, the commission is hereby directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service: Provided, That no investigation or proceeding resulting from the adoption of this resolution shall be permitted to delay the decision of cases now pending before the commission involving rates on products of agriculture, and that such cases shall be decided in accordance with this resolution."

The original and supplemental opinions of the commission show quite plainly that the commission based the order entirely upon the joint resolution. It is said in the opinions that "the joint resolution was primarily relied upon" by the complainant; that while a violation of § 3(1) of the Interstate Commerce Act was alleged in the complaint "no great reliance was placed upon that allegation"; that the "primary issue to be determined" was whether the existing rates were in accord with the resolution; that the resolution effected a change "in the basic law"; and that this change operated to eliminate a decision made June 25, 1925, in another proceeding between the same parties wherein the commission found the same rates neither unreasonable nor unduly preferential and sustained them as lawful rates, 100 I. C. C. 79. True, in both the original and supplemental opinions it is said that the existing rates are unreasonable, but the opinions taken as a whole show that this means the rates were deemed unreasonable under the joint resolution when construed as the commission construed it, and not that they were deemed unreasonable under § 1(5) or § 3(1) of the Interstate Commerce Act. Throughout the opinions it is manifest that the commission was testing the reasonableness and validity of the rates by considerations not applicable under those sections but believed by it to have been brought into the problem by the resolution.

The joint resolution is the outgrowth of several measures proposed in Congress but not adopted. Some of the measures may have been designed by their proposers to make real changes in existing laws relating to transportation rates. But they are not before us. The measure that is before us is the joint resolution which emerged from the legislative deliberations and proceedings. It is brought here to the end that we may determine its proper construction, which of course is to be done by applying to it the rules applicable to legislation in general.

The question presented is whether the resolution changes the substantive provisions of existing laws relating to transportation rates, and particularly whether rates which would be lawful under those laws are made unlawful by it.

The resolution is in three paragraphs. The first declares it to be a true policy in rate making that the conditions which at any given time prevail in the several industries "should be considered" in so far as it is "legally possible" to do so, to the end that commodities may move freely. This policy is not new. In rate making under existing laws it has been recognized that conditions in a particular industry may and should be considered along with other factors in fixing rates for that industry and in determining their reasonableness; and it also has been recognized that so far as can be done with due regard for the interests affected rates should be such as will permit the commodities to which they relate to move freely in the channels of commerce.

The second paragraph is devoted chiefly to requiring the Commission to proceed along stated lines for the purpose of securing prompt observance of existing laws, such as §§ 1(5) and 3(1) of the Interstate Commerce Act, requiring that all rates be just and reasonable and prohibiting all undue preferences and unjust discriminations, whether relating to shippers, commodities, classes of traffic or localities. The only substantive provision in the paragraph is one declaring that in the adjustment of rates the factors to be considered shall include (a) the general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years, (b) a natural and proper development of the country as a whole, and (c) the maintenance of an adequate system of transportation. These matters have all been regarded as factors requiring consideration

under existing laws. The prohibition in § 3(1) of the Interstate Commerce Act of any undue preference of one locality over another always has been treated as intended to prevent the use of rates as a means of promoting the artificial development of one locality to the detriment of another. And what is said about the maintenance of an adequate system of transportation is but a reiteration of provisions embodied in existing laws.

The third paragraph was construed by the commission as making a change "in the basic law", as placing agricultural products in a "most favored" class, and as justifying a reduction in the rates on deciduous fruits moving from California to eastern points, notwithstanding most of the carriers "have not as yet made the fair return" for which § 15a of the Interstate Commerce Act makes provision as a means of securing the maintenance of an adequate transportation system. Indeed, it is apparent from the commission's opinions that it regarded this paragraph as requiring it to condemn the existing rates as unreasonable and unlawful, although, had they been considered independently of the paragraph, they must have been upheld as reasonable and lawful under the applicable sections, 1(5) and 3(1), of the existing law.

We are of opinion that the commission's construction cannot be supported. The paragraph does not purport to make any change in the existing law, but on the contrary requires that that law be given effect. Nor does it purport to make unlawful any rate which under the existing law is a lawful rate, but on the contrary leaves the validity of the rate to be tested by that law.

The paragraph requires only that "lawful changes" in the rate structure be made; and we find in it no sanction for any other change. Unless the paragraph can be said to give its own definition of a lawful change, reference must be had to § 15, par. (1) of the existing law which shows under what conditions and how a lawful change of rate may be effected by the commission.

The commission stresses the concluding words in the same sentence with "lawful changes" and evidently regards them as qualifying the natural import of the latter and in effect specifying a new and reduced scale to be applied in rate making. The words stressed are, "at the lowest possible lawful rates compatible with the maintenance of adequate transportation service".

Considering the connection in which these words are brought into the sentence we think they fall much short of supporting the construction adopted by the commission. They are more in the nature of a hopeful characterization of an object deemed desirable if, and in so far as, it may be attainable, than of a rule intended to control rate making. See *United States* v. *New York Central R. R. Co.*, 263 U. S. 603. Of course they should not lightly be disregarded. Neither should they lightly be accepted as overturning positive and unambiguous provisions constituting part of a system of laws reflecting a settled legislative policy, such as the Interstate Commerce Act. If they mean no more than that the depressed condition of the industry is to be given such consideration as may be reasonable considering the nature and cost of the transportation service and the need for maintaining an adequate transportation system they work no change in the existing law. But if they mean more and are intended to require that rates be reduced to some uncertain level below that standard they give rise to a serious question respecting the constitutional validity of the paragraph of which they are a part. See *Northern Pacific R. R. Co.* v. *North Dakota*, 236 U. S. 585, 595; *Norfolk & Western Ry. Co.* v. *West Virginia*, 236 U. S. 605, 608. By reason of their uncertain meaning, *United States* v. *Barnes*, 222 U. S. 513, 520, and of the constitutional question which would be raised if they were taken as the commission thinks they should be taken, *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407, 422, we think they must be held to work no substantial change in the meaning or operation of §§ 1(5), 3(1) and 15, par. (1) of the existing law.

Our conclusion is that the order of the commission was based upon an erroneous construction of the joint resolution, and therefore should have been set aside by the court below.

Decree reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.